

2006

# Wasatch Oil and Gas, L.L.C. v. Edward A. Reott : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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WASATCH OIL & GAS, L.L.C.,

Plaintiff-Appellant,

vs.

EDWARD A. REOTT, et al.

Defendants-Appellees.

Case No. 20060562-CA

Priority No. 15

GOAL, L.L.C. and REGOAL, INC.,

Counterclaim, Third Party and

Crossclaim Plaintiffs-Appellees,

vs.

WASATCH OIL & GAS, L.L.C. and

BILL BARRETT CORPORATION,

Third party, Counterclaim and

Crossclaim Defendants-Appellants.

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**CONSOLIDATED BRIEF OF APPELLANTS**

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**Appeal from the Seventh Judicial District Court in and for Carbon County  
The Honorable George M. Harmond, Jr., Presiding**

---

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UTAH APPELLATE COURTS  
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**ORAL ARGUMENT REQUESTED**

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**ORAL ARGUMENT REQUESTED**

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## **PARTIES TO PROCEEDING**

The following is a list of parties named in the proceedings before the district court:

### **Plaintiff:**

- WASATCH OIL & GAS, L.L.C., a Utah limited liability company.

### **Defendants:**

- EDWARD A. REOTT, an individual;
- KEY ENERGY SERVICES, INC., a Maryland corporation d/b/a Key Energy Services, Inc. Four Corners Division;
- J-WEST OILFIELD SERVICES, INC., a Utah corporation;
- MISSION ENERGY, L.L.C., a Colorado limited liability company.

### **Counterclaim, Third Party and Cross-Claim Plaintiffs:**

- GOAL, L.L.C., a Utah limited liability company;
- REGOAL, INC., a Pennsylvania corporation.

### **Third Party, Counterclaim and Cross-Claim Defendants:**

- WASATCH OIL & GAS, L.L.C.;
- MISSION ENERGY, L.L.C.;
- WASATCH OIL & GAS PRODUCTION CORPORATION, a Utah corporation;
- WASATCH GAS GATHERING, L.L.C., a Utah limited liability company;
- BILL BARRETT CORPORATION, a Delaware corporation.

As used herein, “Reott” refers collectively to Edward A. Reott and related parties Goal, LLC and Regoal Inc. “Wasatch” refers collectively to Wasatch Oil & Gas, LLC, Wasatch Oil & Gas Production Company and Wasatch Gas Gathering, LLC. “BBC” refers to Bill Barrett Corporation. For simplicity of reference to legal positions and in non-factual contexts, “Wasatch” may also refer to both the Wasatch entities and BBC.

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## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction by transfer from the Utah Supreme Court pursuant to Utah Code Ann. § 78-2-2(4).

## **STATEMENT OF ISSUES PRESENTED**

Wasatch and BBC state the issues presented for review of the Summary Judgment entered in favor of Reott as follows:

- 1. As a judgment creditor who executed on the Section 32 lease interests and purchased those interests with a credit bid of \$1.00, did Reott thereafter:
  - a. Have standing to challenge Wasatch's exercise of the right to redeem the property?**
  - b. Have the right to raise either fraudulent conveyance or sufficiency of consideration to attack Wasatch's right of redemption?****

Preservation below: The issues of Reott's standing to challenge redemption and his right to raise fraudulent conveyance or sufficiency of consideration were raised below. R. 2640-43, 4073-76, 4086--4106, 4621-25, 4582-97.

- 2. Did Wasatch have an interest in the Section 32 interests sufficient, as a matter of law, to permit exercise of the right of redemption after Reott's execution by reason of the following, either separately or together:
  - a. The acceptance by the Utah School and Institutional Trust Lands Administration ("SITLA") of the lease assignment forms and subsequent issuance of a new lease on Section 32 to Wasatch?****



**b. The Letter Agreement between Wasatch and Mission Energy, L.L.C.**

**(“Mission”) to transfer Section 32 and other parcels to Wasatch?**

**c. Wasatch’s promises and performance under the Letter Agreement and its payment of amounts to preserve the Section 32 interests?**

Preservation below: The bases for Wasatch’s legal and equitable claim to and interests in the leases at issue were raised below. R. 2634-43, 4073-76, 4086-4106, 4621-25, 4582-97.

**3. In granting Reott’s cross-motion for summary judgment and finding a fraudulent transfer, did the trial court commit error by:**

**a. Resolving issues of material fact that were in genuine dispute and in assuming facts in favor of the moving party?**

**b. Drawing an inference of fraud without hearing trial testimony regarding alleged "badges of fraud"?**

Preservation below: Disputes of fact and issues relating to the resolution of material facts in dispute and the drawing of improper inferences were raised below. R. 2497-98, 4076-85, 4851-4914, 4924-59.

### **STANDARD OF REVIEW**

When reviewing summary judgment, the Court reviews whether the trial court erred in applying the governing law and whether the trial court correctly determined that there were no disputed issues of material fact. *Pete v. Youngblood*, 2006 UT App 303, ¶ 8, 556 Utah Adv. Rep. 15 (quoting *Beltran v. Allan*, 926 P.2d 892, 895 (Utah Ct. App. 1996)). All facts are reviewed in the light most favorable to the losing party. *Id.*

## **DETERMINATIVE RULE OF CIVIL PROCEDURE**

### **Utah Rules of Civil Procedure, Rule 69(j)(1)<sup>1</sup>:**

*Who may redeem.* Real property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest: (A) the judgment debtor; (B) a creditor having a lien by judgment, mortgage, or other lien on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

### **STATEMENT OF THE CASE**

#### **I. NATURE OF THE CASE**

On appeal, this is a case to quiet title to mineral lease rights on state-owned land located in Carbon County, Utah, specifically Section 32 in Township 12 South, Range 16 East (hereinafter “Section 32”). Reott is a judgment creditor who executed on the mineral lease rights and thereafter, at a sheriff’s sale, acquired the rights in Section 32 (along with federal lease rights in three other sections) for a credit bid of \$1.00. Wasatch filed a notice of redemption with respect to the lease rights against which Reott had executed his judgment (excepting a gas well and forty acres in Section 32 to a depth of 3,398 feet). The Carbon County Sheriff refused to honor Wasatch’s notice of redemption as to *any* of the lease rights; Wasatch then pursued this action. This appeal focuses solely on the Section 32 lease rights because all disputes regarding the rights to other leases sold by the sheriff have been resolved in favor of Wasatch and its successor-in-interest, BBC.

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<sup>1</sup> The language quoted is from the rule as it read at the time of the Sheriff’s Sale and notice of redemption in 2001 and 2002. In November 1, 2004, the pertinent part of Rule 69(j)(1) was renumbered as Rule 69C(b) and amended to read as follows:

*Who may redeem.* Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest.

## II. COURSE OF PROCEEDINGS

This action commenced on December 24, 2001, when in connection with its notice of redemption Wasatch brought suit to quiet title with respect to certain lease rights on Section 32 (the “Section 32 interests”), as well as rights to federal leases on Sections 27, 33 and 34 of Township 12 South, Range 16 East, Carbon County, Utah (the “BLM leases”). R. 1-148.<sup>2</sup> The pleadings setting forth the claims before the Court on this appeal are as follows: (a) Wasatch’s Amended Complaint (R. 1940-67), (b) Reott’s Answer to Amended Complaint (R. 2176-94), (c) Reott’s Second Amended Counterclaim, Cross Claim and Third Party Claim (R. 2118-65), (d) Wasatch’s Reply and Answer (R. 2275-84), and (e) the Answer of BBC (R.2199-2274).

On April 15, 2004, Wasatch moved for partial summary judgment. R. 2496-2644. On April 30, 2004, Reott responded to the Wasatch motion and filed his own motion for partial summary judgment. R. 2645-3382. Wasatch, Reott and BBC each filed opposing and reply memoranda. R. 3661-3944, 3948-4066, 4073-4204-4251, 4269-5512. Briefing concluded on September 14, 2004. The cross-motions were argued before Judge Bryce K. Bryner on January 24, and March 18, 2005. R. 5397.

The motions addressed the state of title with respect to the Section 32 interests as

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<sup>2</sup> The record in this action consists of over 5500 pages. This explanation of the Course of Proceedings attempts to impose simplicity on the voluminous record by citing only to the pleadings that govern issues before the Court on appeal and those items in the record that bear on the trial court’s Ruling and subsequent Order Granting Partial Summary Judgment and Statement of Undisputed Facts. The Ruling, the Order and the Statement are each included in the Addendum at, respectively, Tabs A, B and C. All pages in the tabs of the Addendum are specially numbered for ease of reference – *e.g.*, A-3, B-5 or C-15 – and will be so cited in this Brief, after initial citation to the Record.

well as the BLM leases. With respect to each of these leases, Mission was formerly the lessee. The BLM leases covered property owned by the federal government. Section 32 is owned by the State of Utah and was subject to mineral leases administered by SITLA.

On December 16, 2005, two weeks before he retired from the bench (and nine months after oral argument), Judge Bryner issued his Ruling on the cross-motions of Wasatch and Reott for partial summary judgment on redemption, quiet title, and fraudulent conveyance issues. Tab A. An Order Granting Partial Summary Judgment and the Statement of Material Undisputed Facts, both prepared by Reott to implement Judge Bryner's Ruling, were entered on May 24, 2006, by Judge George M. Harmond, Jr. Tabs B and C.

The trial court found that there was no genuine issue as to any fact material to resolution of the quiet title and redemption claims, both with respect to the Section 32 interests as well as the BLM leases. The trial court held that Wasatch was in the chain of title with respect to the BLM leases and, thus, could exercise the right of redemption. B-3. The trial court directed the entry of final judgment on this issue pursuant to Utah R. Civ. P. 54(b) and Reott did not take an appeal from this aspect of the Summary Judgment. B-4, -5. Wasatch subsequently tendered the requisite \$1.06 to Reott, a Certificate of Redemption issued and the BLM lease rights were transferred. R. 5435-49.

The trial court's conclusion with respect to the Section 32 interests is the subject of this appeal. The trial court held that Wasatch was not in the chain of legal title with respect to any portion of Section 32 and that, by reason of Mission's fraudulent conveyance of its Section 32 lease rights (as determined by the trial court on motion for

summary judgment), Wasatch did not have a claim to the Section 32 interests, legal or equitable, sufficient to permit exercise of the right of redemption. The trial court directed that title to all Section 32 lease rights be quieted in Reott. B-3, -4. As with the summary judgment on the BLM leases, the trial court directed the entry of final judgment on the Section 32 quiet title and redemption issues pursuant to Utah R. Civ. P. 54(b). B-4.

Wasatch filed its Notice of Appeal on June 12, 2006. R. 5428-30. BBC also filed a Notice of Appeal on June 14, 2006. R. 5431-34. The appeals have been consolidated by order of the Court dated July 21, 2006. R. 5511-12.<sup>3</sup>

### **III. STATEMENT OF FACTS<sup>4</sup>**

The review of cross-motions for summary judgment addresses both material facts not in dispute and those in dispute. Notwithstanding the voluminous record and lengthy findings, what really matters in this appeal are a few simple facts. The discussion below is in two parts: A) facts material to the legal analysis that are not in dispute, and B) facts

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<sup>3</sup> It is significant to note that Reott has filed *lis pendens* clouding BBC's title on numerous leases outside the scope of the Sheriff's Sale (and in some cases outside the boundaries of Carbon County). These filings were made in 2002 on the apparent premise that some day Reott would obtain a favorable ruling on his claim of fraud that would permit execution of his deficiency judgment against additional properties transferred by Mission to Wasatch and now owned by BBC. BBC seeks an order removing the cloud on title and precluding Reott from future filings against any of the oil and gas assets that were the subject of the transactions in dispute in this case absent a trial and specific finding of liability.

<sup>4</sup> The trial court, through Judge Harmond, signed a "Statement of Material Undisputed Facts," consisting of 128 separate paragraphs and running 30 pages. See Tab C. The Statement signed was prepared by counsel for Reott based on the two and one-half pages of Judge Bryner's Ruling devoted to analysis of the Section 32 lease interests. A-4 to -6 Wasatch and BBC filed timely objections to specific items set forth in Reott's proposed Statement as ultimately executed by Judge Harmond. R. 4851-4914.

deemed material by the trial court to the issue of fraudulent conveyance and the related inferences drawn by Judge Bryner in considering those facts (notwithstanding clear and substantial disputes in the record).

**A. Material Facts Not In Dispute**

**1. Mission Energy LLC**

The rights at issue in this appeal trace back to Mission, a Colorado company engaged in oil and gas development in Carbon County, Utah. C-6. From 1997 to 2000, Justin C. Sutton (“Sutton”) acted as Mission’s manager with authority to sign legal documents on behalf of Mission. R. 2522-26.

In 1997, Mission acquired leases **ML 43541** and **ML 43798**, which together covered Section 32, from White River Enterprises (“White River”). R. 2530 (attached as Tab D), 2531-36, C-6. On forty acres of the portion of Section 32 covered by **ML 43541**, Mission drilled a well called the Lavinia 1-32 Well. C-7.

Section 32 is owned by the State of Utah. C-6. Pursuant to Utah Code Ann. § 53C-1-201(1)(b), SITLA manages Section 32 and, on behalf of the State of Utah, was the lessor on **ML 43541** and **ML 43798**. *Id.*

The transfer of Section 32 lease rights to Mission was accomplished by filling out a standard SITLA form as required by SITLA. D-1. In executing the form for **ML 43541**, the sole signatory as Assignor was Kevin Williams; White River did not execute the form as the party assigning the leases. *Id.* Notwithstanding this apparent defect, SITLA approved the assignment and Mission assumed the rights and obligations of lessee under **ML 43541**.

## **2. Reott' Judgment**

Reott's dealings with Mission date back to 1997. In that year, Reott loaned \$160,000 to Mission. C-7. Sutton also signed a subscription agreement on behalf of Mission in his capacity as manager of Mission as evidence of a further investment by Reott. R. 2523-24. (The subscription agreement is mentioned solely because it did not contain signatures of any other Mission managers and there is no evidence that other Mission managers approved the transaction — a fact of potential consequence to the fraud claim.)

When Mission did not repay its debt obligation, Reott filed suit. C-7, -8. That case was ultimately heard and resolved in Colorado, with judgment entered on December 20, 1999. *Id.* The Reott Colorado judgment was in the amount of \$204,000. *Id.* Reott did not record his judgment in Carbon County until October 27, 2000. C-16.

## **3. Oil and Gas Liens on Section 32**

As of June 21, 2000 (when Mission agreed to transfer the Section 32 interests to Wasatch [*see* part 4 below]), both Key Energy Services, Inc. ("Key Energy") and J-West Oilfield Services, Inc. ("J-West") had recorded liens against Mission's interest in Section 32 in the amount of \$21,952 and \$52,862, respectively. R. 2550-54, C-8. Moreover, the district court had already entered a judgment of foreclosure in favor of J-West. C-9. A judgment of foreclosure was entered on the Key Energy lien on December 13, 2000. C-17. Reott later acquired both the J-West judgment (January 19, 2001) and the Key Energy judgment (April 27, 2001). *Id.* After credit for amounts paid on these judgments, there remained a total principal balance due of \$34,595. R. 345. Thus, by April 27,

2001, Reott held judgments in a combined unpaid amount of \$238,595.

#### **4. Wasatch's Acquisition of Section 32 Mineral Leases**

The transaction at the center of this appeal unfolded in the following manner:

##### **a. The Letter Agreement**

On June 21, 2000, before Reott's first appearance in Utah, Mission and Wasatch executed a letter agreement ("Letter Agreement"). C-9. This was the third of three transactions between Mission and Wasatch by which Mission transferred mineral lease rights to Wasatch. R. 2509-19. One of the previous transactions had included the BLM leases. C-8, -9.

The Letter Agreement provided for the transfer to Wasatch of ten mineral leases: eight other leases with the BLM and the two SITLA leases in Section 32 at issue here — **ML 43541** and **ML 43798**. R. 2555-57 (attached as Tab E), 5403-04. However, with respect to **ML 43541**, the Letter Agreement reserved to Mission the lease rights on forty acres of Section 32 consisting of the spacing unit on which the Lavinia 1-32 Well was located (NW $\frac{1}{4}$ SE  $\frac{1}{4}$ ), from the surface to a depth of 3,398 feet in that forty acres. C-10; E-3. The remaining Section 32 lease rights subject to the Letter Agreement are what have been referred to as the "Section 32 interests," defined above in Section II.

As consideration for the transfer, the Letter Agreement provided (C-10; E-1, -2):

- a) Wasatch would reimburse Mission for rentals on certain leases in a total amount of \$3,629.40.
- b) Wasatch would take upon itself all of Mission's future financial obligations to the lessor, whether SITLA or the BLM, with respect to the leases.
- c) Mission would have a right of first refusal with respect to participation in any



“‘trade’ relating to a drilling deal that Wasatch may be successful in putting together on the Leases. . . .”

- d) Wasatch would front any costs “incurred . . . to get the Leases in good standing,” but with the exception of three federal leases (Burris/Horse Bench), Mission was obligated ultimately to reimburse Wasatch for these costs.

**b. Documentation of the Transfer**

As provided in the Letter Agreement, on June 23, 2000, Sutton executed three mineral lease assignments on standard SITLA forms to transfer the lessee’s interest in Section 32 (**ML 43541** and **ML 43798**) to Wasatch (excepting the Lavinia 1-32 Well as noted above). R. 73-74, 2558-65 (attached as Tab F), C-10, -11. While it was Sutton’s intention, as manager of Mission, to transfer *Mission’s* interest (R. 2566-68), the SITLA form for each transfer bears only the signature of “Justin C. Sutton” as “Lessee – Assignor.”<sup>5</sup> Wasatch signed the forms indicating its acceptance of the transfer of lease rights from Mission and obligating itself to pay future rental amounts and to undertake improvements necessary to maintain these lease rights. *Id.* SITLA approved both the June 23, 2000 transfers to Wasatch, with that approval duly noted on July 5, 2000, by a stamp of “Assignment Approved” affixed to the lease assignment forms. Tab F. On September 15, 2000, SITLA and Wasatch executed a new lease – **ML 43541A** – with respect to 520 acres of Section 32. R. 2569-80 (attached as Tab G).

Wasatch did not record the lease assignment forms for **ML 43451** and **ML 43798** or the new lease **ML 43451A** with the Carbon County Recorder. C-12. However, each

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<sup>5</sup> In this regard, the forms mirror that signed by Kevin Williams two years earlier to transfer some of the same rights, then owned by White River, to Mission. Tab D.

lease assignment form and the new lease were found in the records at the offices of SITLA and available there for public inspection. R. 2558-65, 2569-80.

### **c. Performance under the Letter Agreement**

Wasatch paid the \$3,629.40 required in the Letter Agreement. R. 4035-38 (affidavit attached as Tab H without exhibits). Thereafter, Wasatch paid an additional \$4,590 in rentals and royalties relating to the mineral leases covered by the Letter Agreement, and otherwise managed the properties from the date of that agreement until Wasatch transferred the mineral leases to BBC.<sup>6</sup> *Id.* Ultimately, Wasatch was not successful in “putting together” a “trade relating to a drilling deal” as referenced in the Letter Agreement. C-14. On May 17, 2002, Wasatch sold the Section 32 interests, along with numerous other oil and gas interests, to BBC. C-22.

### **5. Reott’s Execution on his Judgments**

Nearly a year after the date of the Letter Agreement, on May 16, 2001, Reott commenced proceedings to enforce his three judgments against the BLM leases and Section 32. C-17. As of that date, the following were true with respect to Section 32:

- a. Wasatch was lessee on the records of SITLA with respect to mineral leases **ML 43541A** and **ML 43798**, and the deep rights (below a depth of 3,398 feet) of **ML 43541** in Section 32. Tabs F and G.
- b. Mission was lessee of record [**ML 43541**] with respect to the Lavinia 1-32 Well and the depth above 3,398 feet in NW¼SE¼ of Section 32 but claimed no interest in the rest of Section 32. C-10.
- c. Reott owned three judgments based on the J-West and Key Energy Liens

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<sup>6</sup> As part of a corporate reorganization undertaken for tax purposes, Wasatch Oil & Gas, Corp. transferred the Section 32 lease rights to Wasatch Oil & Gas, LLC — both related entities and legal predecessor/successor. R. 2627, C-16.

and a judgment lien against Mission property in Carbon County. C-16, -17.

On August 9, 2001, Carbon County Deputy Sheriff W. R. Craig conducted a sheriff's sale with respect to the BLM leases and Section 32 to satisfy the three judgments owned by Reott (the "Sheriff's Sale"). R. 2604-08; C-18. At the Sheriff's Sale, Reott made a credit bid of \$1.00 to acquire the BLM leases on Sections 27, 33 and 34 together with all SITLA mineral lease interests on Section 32, including the Section 32 interests. C-18. The Sheriff's office thereafter issued a Sheriff's Certificate of Sale (R. 2609) that recited the sale to Reott for the sum of \$1.00, as the "highest bid made," the following property:

Township 12 South Range 16 East; Sections 27, 32, 33 and 34 in Carbon County Utah together with oil and gas lease (Utah State Mineral Lease No. ML-43541), the oil and gas well located thereon referred to as Lavina State L# 1-32 [sic], and all productions, improvements, equipments and pipelines on or appurtenant to the well.

#### **6. Wasatch's Attempts to Redeem the Mineral Leases**

On December 24, 2001, Wasatch filed with the clerk of the Seventh District Court a timely Notice of Exercise of Right of Redemption (the "Redemption Notice") seeking, for the sum of \$1.06 (enclosed with the notice), to redeem the BLM leases and the Section 32 leases, but specifically excluding the Lavinia 1-32 Well and related spacing unit and depth (which were not a part of the Letter Agreement). C-18, -19. Deputy Craig sent a letter to Wasatch dated January 10, 2002, returning the notice stating that he was unable to find Reott, Mission, Key Energy or J-West in Carbon County (without further explanation). R. 2613; C-20. On January 18, 2002, Wasatch sent a second Notice of

Redemption to the Carbon County Sheriff essentially mirroring the first notice.<sup>7</sup> C-20.

The sheriff took no action on this second notice and made no response.

## **7. The Sheriff's Deed**

On February 9, 2002, Reott transferred whatever rights he had acquired at the Sheriff's Sale to his company Regoal, Inc. C-21. Thereafter, although he was aware of Wasatch's attempt to redeem, Reott prepared a form of Sheriff's Deed based on a form provided by the Carbon County sheriff's office that erroneously represented: "More than six months have elapsed since the day of said sale, and no redemption of the property so sold has been made." R. 2610-11, 2615-21. The Sheriff of Carbon County signed the Sheriff's Deed in favor of Regoal on March 6, 2002. *Id.*

### **B. Facts Found By The Trial Court That Are In Dispute**

In concluding on summary judgment that Wasatch could not redeem the Section 32 interests, Judge Bryner found that "the purported transfers [of the Section 32 interests] were fraudulent and therefore conveyed no equitable or legal title to Wasatch." A-6. He adopted Reott's argument (resolving all issues in favor of the moving party) that certain facts constituted "badges of fraud" and, taken together, added up to fraud. *Id.* Reott urged that Wasatch had "conceded" these facts and Judge Bryner embraced this contention, despite Wasatch's pointed opposition and clear representations to the contrary. The trial court then drew the inference from these purportedly "undisputed facts" that the transfer of the Section 32 interests had been "fraudulent."

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<sup>7</sup> There was never any allegation that either notice was defective as to form or that service of either notice failed to comply with Utah R. Civ. P. 69(j), as it then existed.

Wasatch contends that the trial court engaged in fact finding both in determining that certain isolated facts were “material” as “badges of fraud” and then in drawing the inference of fraud from these combined “badges of fraud.” Wasatch objected to Reott’s statements of undisputed facts as being “mainly contentions regarding the legal meaning of the underlying documents—which, of course, are not [facts] at all, but legal argument. . . .” R. 4076-79. *See also* R. 4851-4914, 4924-59 (objections to proposed findings).

Wasatch disputed Reott’s claimed “badges of fraud” as follows:

**Alleged Badge of Fraud 1:** *Sutton assigned the SITLA Leases after mechanics liens, foreclosure actions and judgments had been entered against Mission.* R. 2698.

**Dispute:** Wasatch disputed the materiality of this fact, first and foremost, because the Mission-Wasatch transfers “could not and did not impact in any way Reott’s existing and acquired interests in Section 32.” R. 4099. While the timing of the SITLA lease assignments was not in dispute, a dispute did exist as to whether the timing bore any relationship to creditors’ claims or was calculated to disadvantage any creditor or lienholder. R. 4076-79. Reott’s predecessors — J-West and Key Energy — were both secured creditors. J-West had already obtained a judgment against Mission and Key Energy had recorded its lien before the lease assignments. They suffered no disadvantage from the timing of the assignments. Sutton testified that the impending loss of the lease interests for nonperformance dictated the timing of the transfer. R. 3955-56. The Letter Agreement was simply the last of three separate transfers of lease interests to Wasatch between May 1999 and June 2000 (R. 2509-19), each for consideration that included cash payments or reimbursements to Mission.

**Alleged Badge of Fraud 2:** *Sutton and Wasatch “carved up” the ML 43541*

*lease with the intent to evade the liens and judgments.* R. 2698.

**Dispute:** Wasatch disputed the argument that the division of **ML 43541** lease had as its purpose to defraud creditors. R. 4076-79. Wasatch did not want the Lavinia 1-32 Well; Mission felt that the well was a “significant asset.” R. 2567-68. The “carve up” did not shield any Mission asset from execution but rather left in Mission’s hands a “significant asset” while permitting it to relieve itself of the obligations it could not meet under leases on marginal acreage for some consideration. R. 2516, 3955-56.

**Alleged Badge of Fraud 3:** *Wasatch gave no value for the Section 32 leases transferred in the Letter Agreement.* R. 2700.

**Dispute:** Wasatch did give consideration, as recited in the Letter Agreement (E-1 and -2) and discussed in Argument Section IIC below, and that consideration had value. The consideration was: (a) \$3,629.40 in rental reimbursements, (b) the promise to pay past due and future rentals and to perform other obligations to SITLA (ultimately \$4,590 for Section 32, not counting geology and engineering work<sup>8</sup>), (c) the promise to operate the Section 32 interests as required by SITLA, and (d) the promise of participation in a potential drilling deal (such an attractive “opportunity” to Mission that it declined Wasatch’s alternative offer of \$5 per acre for the lease rights). R. 3955-56, 3966, 4085, Tab H.

**Alleged Badges of Fraud 4 and 5:** *Mission was insolvent at the time of the Letter*

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<sup>8</sup> Sutton testified that Mission’s leases to Section 32 were set to expire for nonperformance. R. 2516.

*Agreement and Mission essentially conveyed the last of its assets. R. 2701-02.*

**Dispute:** Mission retained a substantial asset — the Lavinia 1-32 Well and lease **ML 43541** covering forty acres above a depth of 3,398 feet. R. 2555, C-10. The value of the Lavinia 1-32 Well and surrounding acreage (which Reott acquired at the Sheriff's Sale and Wasatch did not attempt to redeem) was in dispute, but it was Reott's own expert witness who opined in February 2004, that the Lavinia 1-32 Well was capable of producing "revenue of at least \$116,064 since April 2002." R. 3975.

**Alleged Badge of Fraud 6:** *Sutton resigned and Mission absconded.* R. 2702.

**Dispute:** Fred Jager replaced Sutton as Mission's manager. R. 3960, 4091.

**Alleged Badges of Fraud 7, 8 and 9:** *The lease assignment forms were not recorded and were "wild" deeds, executed in haste, without regard to title and recording laws or Mission's own rules, and then concealed from creditors.* R. 2702-04.

**Dispute:** The transfers were not recorded because recording served no purpose. In contrast to deeds for interests in private lands, State leases and lease assignments are maintained in the public records of SITLA, consistent with standard practices for State mineral leases. Any creditor or interested party could consult those records to ascertain the lease status of Section 32. Thus, the leases were found in the chain of title maintained by the State of Utah. No "recording law" required that the leases also be recorded in the county. R. 4088-89, 4094-96.

**Alleged Badges of Fraud 8 and 11:** *Sutton executed the assignments without regard to Mission's own rules; under Mission's operating agreement, Sutton could not by himself convey Mission's interests.* R. 2703, 2705.

**Dispute:** To refute Reott's assertions regarding the scope of Sutton's authority to act for Mission, Wasatch cited the following evidence:

- Sutton was Mission's only manager during the time period. R. 3952-63, 4091.
- Sutton signed other legal documents on behalf of Mission, including the subscription agreement Mission issued to Reott. R. 2523-24.
- Reott admitted that "Mission" sent a letter to Wasatch dated August 22, 2000 that ratified the Letter Agreement and assignments. R. 2683-84.
- Fred Jager, who succeeded Sutton as Mission's manager, acknowledged Sutton's authority to make the June 2000 transfers. R. 4090-92.
- Mission routinely acted through Sutton as its sole agent. *Id.*

**Alleged Badge of Fraud 10:** *To further conceal the transfers, Wasatch promptly conveyed the SITLA leases from one sister company to another.* R. 2704-05.

**Dispute:** As part of the corporate reorganization, one Wasatch entity — Wasatch Oil & Gas Corp. — transferred various leases, including the Section 32 interests, to an affiliated entity — Wasatch Oil & Gas, LLC. R. 4076-79, 5410. The transfers and reorganization were motivated solely by tax considerations, not to conceal the Section 32 interests. R. 2627. Moreover, the intra-Wasatch transfers were recorded. R. 5410.

**Other Facts in Dispute.** Besides these supposed "badges of fraud," Wasatch and BBC disputed many other facts alleged by Reott and adopted by the trial court in its thirty-page Statement of Undisputed Facts entered in support of the summary judgment granted with respect to the Section 32 lease rights. While far too numerous to itemize here, these points of dispute are set forth in the Opposition to Reott's proposed order and findings of undisputed fact. R. 4851-4914, 4924-59.



## SUMMARY OF THE ARGUMENT

Reott credit bid a nominal \$1.00 at a sheriff's sale to acquire all mineral lease rights in four sections of land. This single fact explains the present litigation.

The trial court's partial summary judgment permitting Reott to defeat Wasatch's right of redemption by finding fraud contravened this Court's rulings in *Brockbank v. Brockbank*, 2001 UT App 251, 32 P.3d 990, *Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.*, 737 P.2d 1328 (Utah Ct. App. 1990), and *Territorial Savings & Loan Association v. Baird*, 781 P. 2d 452 (Utah Ct. App. 1989).

Reott has no standing to attack Wasatch because he suffered no particularized injury in connection with Wasatch's redemption of the Section 32 interests. As with the BLM leases (which the trial court concluded were subject to redemption), Reott acquired the Section 32 interests *subject to the right of redemption*. By making a nominal credit bid, he set and agreed to accept a corresponding redemption price. This miscalculation, entirely of Reott's doing, does not confer standing to attack Wasatch's right to redeem.

*Brockbank* and *Tech-Fluid* dictate this outcome: "The judgment creditor always has it in his power to make the land sold under execution of his judgment bring its real value, so that, if redemption is effected, he cannot be hurt"; thus, if the creditor underbids, he "should not now be heard to complain" — he is "bound by [his] choices." *Brockbank*, 2001 UT 251 ¶ 12 n.3; *Tech-Fluid*, 787 P.2d at 1335. *Brockbank* specifically held that the purchaser at a sheriff's sale cannot assert fraud to defeat or control redemption: "[T]he transfer of the right of redemption *cannot be a fraudulent conveyance*," "notwithstanding any actual, subjective intent of [the debtor] 'to hinder,

delay or defraud' the creditor.” 2001 UT 251 ¶¶ 12, 15 (emphasis added). Thus, as a matter of law, Reott has no claim or defense based on fraudulent conveyance.

The Utah Supreme Court has mandated a “liberal construction and application” of Rule 69. *United States v. Loosely*, 551 P.2d 506, 508 (Utah 1976). Under a truly liberal construction of Rule 69 implementing the remedial purposes of redemption, there can be no dispute that Mission intended to transfer the Section 32 interests to Wasatch and that, as of the date of redemption, Wasatch had legal and equitable title to those interests sufficient to redeem. The evidence establishes: (a) Mission executed the Letter Agreement, for sufficient consideration, to transfer the Section 32 interests to Wasatch; (b) Mission’s manager assigned the leases to Wasatch; (c) SITLA as owner and lessor approved the transfers and issued a new lease to Wasatch; and (d) Wasatch paid rents, managed the leases, and preserved them from termination. Therefore, Wasatch is Mission’s successor-in-interest and is entitled to redeem notwithstanding Reott’s belated challenge to Wasatch’s rights.

The trial court’s finding of fraudulent conveyance is error, apart from its flawed conclusions of law. This finding creates separate problems with respect to properties other than the Section 32 interests, exposing other BBC leases to execution to satisfy Reott’s deficiency judgment without any adjudication of fraud by a trial on the merits. The trial court assumed the materiality of facts advanced by Reott, embracing them as “badges of fraud” without any trial on this disputed issue. Wasatch established in the record serious disputes regarding the materiality of isolated facts characterized as “badges of fraud.” Separate evidence, if believed, demonstrated that these relatively

innocuous facts were not indicia of fraud but simply how the parties structured their transaction. By assuming the facts to be what Reott, the moving party on the issue of fraud, represented them to be, ignoring explanatory and contrary facts, the trial court weighed the evidence and committed error.

The trial court then compounded error by drawing the inference from Reott's aggregation of "facts" that the transfer of the Section 32 interests was fraudulent. This exercise in discerning the intent behind a transaction contravened this Court's holding in *Territorial Savings*. "Badges of fraud" are only "indicia of fraud" from which actual fraud "may be inferred," but "do not of themselves or per se constitute fraud." 781 P.2d at 462. No matter how many "badges of fraud" one may discern in a transaction, the trial court should not infer fraud without permitting the party accused of fraud to proffer an explanation at a trial on the merits. The trial court's finding of fraudulent conveyance, on summary judgment and without permitting Wasatch a trial, was reversible error.

This finding not only conferred on Reott title to all Section 32 mineral leases for the credit bid of \$1.00 but it opened the door for execution of Reott's \$238,594 deficiency judgment against other BBC leases while denying Wasatch and BBC any opportunity to test the fraud theory at a trial of the merits. Whatever this Court's disposition of the redemption issue, it must separately address and reverse the trial court's finding of fraud.

In summary, this Court should rule that (a) Wasatch has the right to redeem the Section 32 interests and (b) the trial court wrongly decided the issue of fraudulent conveyance in light of the record before it on cross-motions for summary judgment.

## ARGUMENT

### Introduction

**This appeal presents a central issue: Could Wasatch as successor in interest exercise Mission's right as debtor to redeem the Section 32 interests after Reott had acquired those interests at the Sheriff's Sale with a credit bid of \$1.00?**

With respect to the BLM leases (also acquired by Reott at the Sheriff's Sale for \$1.00), the trial court correctly held that Wasatch could redeem as Mission's "successor in interest." The trial court also correctly held that, absent a sufficient defense, the lease assignment forms in tandem with the Letter Agreement gave Wasatch an equitable interest in the Section 32 interests sufficient to support a right of redemption. A-3, -4, -6.

Notwithstanding these correct rulings, none of which has been appealed by Reott, the trial court arrived at an incorrect result with respect to Wasatch's right to redeem the Section 32 interests. The errors of law leading to this incorrect result include holding, with respect to the fraudulent conveyance defense, that (a) Reott could assert that defense to challenge Wasatch's redemption of the Section 32 interests, (b) all facts material to establishing this defense were undisputed (resolving manifest disputes of fact uniformly in favor of Reott), (c) those undisputed material facts compelled the inference that Mission and Wasatch had acted fraudulently in the transfer of the Section 32 interests, and (d) Rule 56 permitted the trial court to draw the inference of fraudulent intent on summary judgment motion, without hearing any evidence.

The trial court also committed error in declaring SITLA's issuance of leases and approval of lease assignments to be legal nullities. Moreover, the trial court disregarded

undisputed evidence of the consideration given by Wasatch under the Letter Agreement. In the end, the undisputed evidence established that Mission intended to transfer the Section 32 interests to Wasatch and that, consistent with that intent, Wasatch undertook Mission's lease obligations, made payments to Mission, SITLA and the BLM, and preserved those lease interests for over a year prior to the Sheriff's Sale. By August 9, 2001, Wasatch was the sole entity in a position to exercise the right of redemption.

Two opinions of this Court, acknowledged by the trial court at A-4, provide controlling guidance in deciding this appeal: *Brockbank v. Brockbank*, 2001 UT App 251 ¶ 12, 32 P.3d 990, 993 and *Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.*, 737 P.2d 1328, 1335 (Utah Ct. App. 1990). This Court must apply the reasoning and authorities underlying the *Brockbank* and *Tech-Fluid* decisions, albeit to a unique set of facts rendered needlessly complex by the breadth of Reott's attack on Wasatch.

Additionally, by finding fraud as a matter of law to avoid application of its correct legal conclusions to the Section 32 interests, the trial court contravened the holding of a third decision of this Court: *Territorial Savings & Loan Association v. Baird*, 781 P. 2d 452 (Utah Ct. App. 1989). No matter how many "badges of fraud" one may discern in a transaction, any inference of fraud is not a permissible legal conclusion absent a trial of the merits. Thus, Judge Bryner's finding of fraudulent conveyance, on summary judgment and without permitting Wasatch a trial on the merits, is reversible error under *Territorial Savings*.

**I. REOTT HAS NO STANDING TO ATTACK WASATCH'S RIGHT TO REDEEM THE SECTION 32 INTERESTS.**

Reott's attack on the redemption of the Section 32 interests rests on theories of liability and avoidance that are not and never were his to advance. A brief recap of the chronology of the parties' dealings with respect to Section 32 is a helpful starting point:

**What Wasatch, Mission and SITLA did:**

June 21, 2000 – Mission signed the Letter Agreement with Wasatch to transfer, among various leasehold interests, the Section 32 interests for recited consideration.

June 23, 2000 – Mission's sole manager Sutton executed SITLA forms purporting to transfer the Section 32 interests to Wasatch as provided in the Letter Agreement.

July 5, 2000 – SITLA approved the June 23, 2000 forms evidencing the transfer of the Section 32 interests to Wasatch .

September 20, 2000 – SITLA issued a new Section 32 lease to Wasatch.

**What Reott did:**

October 29, 2000 – Reott recorded his Colorado judgment in Carbon County.

January 19, 2001 – Reott acquired the J-West lien judgment.

April 27, 2001 – Reott acquired the Key Energy lien judgment.

August 9, 2001 – Reott executed against Section 32 and against the BLM leases on his three judgments at the Sheriff's Sale. As sole bidder, Reott credit bid \$1.00 out of his \$238,595 in judgments (retaining a deficiency of \$238,594) to acquire the BLM leases and all leases on Section 32, including not only the Section 32 interests transferred to Wasatch, but the Lavinia 1-32 Well and surrounding forty acres still in the name of

Mission on SITLA's records.

**What Reott did not do:**

Prior to this litigation, Reott did not undertake any attack on the transfers to Wasatch or on the rights claimed by Wasatch.

Only after Wasatch twice filed redemption notices with respect to the BLM leases and the Section 32 interests and commenced this action did Reott allege deficiencies in the Mission/ Wasatch transfers and the SITLA approvals to resist Wasatch's redemption.

**What Mission did not do:**

Mission has never attempted to avoid or disclaim the transfer of the Section 32 interests; rather, it has ratified the transfer of these interests to Wasatch and abandoned the Section 32 interests, leaving it to Wasatch to maintain and operate those interests.

Mission has never transferred to Reott the claims or defenses advanced by Reott in this litigation and on which the trial court relied in entering summary judgment.

Mission has never exercised any right of redemption.

**a. Reott Has No Standing Because He Suffered No Injury By Reason Of Wasatch's Redemption Of The Section 32 Interests.**

Wasatch's redemption of the Section 32 interests did no injury to Reott. Without injury, he has no standing to assert fraudulent conveyance or to attack Wasatch's redemption notice. To have standing, a party must demonstrate "some distinct and palpable injury that gives rise to a personal stake in the outcome of the dispute."

*Washington County Water Conservancy District v. Morgan*, 2003 UT 58 ¶ 20, 82 P.3d 1125, 1131 (quoting *National Parks Conservation Association v. Board of State Lands*,

869 P.2d 909, 913 (Utah 1993)).

On August 9, 2001, Reott relinquished his judgment creditor status by accepting his own \$1.00 credit bid at the Sheriff's Sale (*i. e.*, Reott paid nothing out-of-pocket, but took a credit of \$1.00 against the \$238,595 judgment owed to him). This extinguished all lien or judgment interests Reott held against the Section 32 interests; as to those interests, he ceased to be a judgment creditor.<sup>9</sup> *See Clawson v. Moesser*, 535 P.2d 77, 78 (Utah 1975) (after foreclosure, the "mortgage was exhausted, and no further proceeding under it was possible"). Instead, as the result of his \$1.00 bid, Reott acquired the Section 32 interests (together with the BLM leases and the Lavinia 1-32 Well), but he did so subject to Mission's right of redemption. Utah R. Civ. P. 69(j). Thus, the title Reott acquired with his \$1.00 bid was conditioned on the passage of six months without exercise of the right of redemption. With his \$1.00 credit bid, Reott named his price and took this risk.

Only Mission as debtor has standing to complain of any attempt by Wasatch to exercise the right of redemption. Whether the attack is based on defective documentation, lack of authority, failure of consideration, or perceived fraud in the transaction, Mission alone would suffer injury if Wasatch exercised the right and Mission alone would have standing to attack Wasatch's exercise of the right.

Of course, in his capacity as a judgment creditor until August 9, 2001, Reott had

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<sup>9</sup> Reott's \$1.00 credit bid left him with a deficiency judgment of \$238,594 (a retained advantage that he engineered by his nominal credit bid). It may be argued that this deficiency amount potentially encumbers Mission's former leases now held by BBC, assuming Reott can avoid Mission's transfer of those properties. The trial court's summary judgment on fraudulent conveyance gives him an argument in favor of this result without affording Wasatch and BBC the right of a trial on the merits.



standing and full opportunity to challenge any party, such as Wasatch, purporting to occupy a place in the chain of title at variance with or superior to the rights then held by Reott. He chose not to pursue this course. Instead, he took the more direct route of executing on his three judgments and thereby ceased to have standing based on status as a judgment creditor.

Had Reott credit bid the face amount of his combined judgments, or even the fair value of the combined BLM leases and Section 32 leases (if that was less than the judgment amount), there currently would be no dispute. One way or the other, Reott would have been fully compensated.<sup>10</sup> The complicating fact here is the \$1.00 credit bid. Reott set the bar ridiculously low. By his shortsighted strategy, Reott might suffer a self-inflicted injury, but this does not confer on him standing to challenge Wasatch's exercise of the debtor's right of redemption. "'The judgment creditor always has it in his power to make the land sold under execution of his judgment bring its real value, so that, if redemption is effected, he cannot be hurt.'" *Brockbank, supra*, 2001 UT App 251 at ¶ 12, n. 3 (quoting *Rose v. Loughborough*, 182 Ark. 782, 32 S.W.2d 1066, 1068 (1930)).

In *Tech-Fluid, supra*, this Court reviewed a similar situation, in which a judgment creditor credit bid a below market amount to acquire title to a natural gas property. After exercise of the right of redemption by the debtor's successor in interest, the creditor advanced a wide range of theories to defeat redemption. The creditor questioned the

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<sup>10</sup> The *Brockbank* court noted this fact in a similar context: "[The foreclosing creditor], by bidding a higher price, would have had to credit more against [the debtor's] bid; however, she would also have received a greater amount of money had redemption occurred, or she would have retained the property valued at \$45,000." 2001 UT App 251 ¶ 14.

debtor's title to the right, its compliance with the rule, and the amount tendered to redeem. To each of these attacks, this Court responded: "[The creditor] should not now be heard to complain. [It] chose its own course of action" and "is bound by its choices, including the decision to bid only \$4,000 on the well. As the only bidder at the sale, [the creditor] established the value of the well for redemption purposes and placed itself in the predicament it now finds itself." *Tech-Fluid*, 787 P.2d at 1335.

The response to Reott must be the same. He chose not to sort out any potential issues regarding Wasatch's status before executing on his judgments. This omission is of strategic consequence *only* because Reott credit bid \$1.00 and now wishes to defend a portion of his windfall. Any such issues are no longer of any *legal* consequence as to Reott because he chose to relinquish the sole legal status – judgment creditor – that previously would have given him any standing to raise issues regarding chain of title. He is now "bound by his choices" and "should not now be heard to complain." *Id.*

**b. Under This Court's Holding In *Brockbank*, Reott As A Foreclosing Creditor Cannot Rely On A Fraud Theory To Defeat Redemption.**

The trial court committed error in permitting Reott to allege fraud to defeat redemption.<sup>11</sup> *Brockbank, supra*, holds that, as to the foreclosing creditor, "the transfer of the right of redemption cannot be a fraudulent conveyance. . . ." 2001 UT App 251 ¶ 12. This holding rests on settled Utah policy that the right of redemption is "to provide a

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<sup>11</sup> The trial court compounded this error by embracing that fraud theory, on summary judgment, to void Wasatch's equitable title to the Section 32 interests. The error in adopting such a fact-intensive theory on summary judgment is discussed below in Part III. The present discussion addresses solely the threshold issue of whether the creditor can attack the redemption by asserting fraud in the transfer of the right.

check on bids that are well below market value.” *Id.* In furtherance of this policy, the Utah Supreme Court has held that “rules and statutes dealing with redemption are regarded as remedial in character and should be given liberal construction and application. . . .” *United States v. Loosley*, 551 P.2d 506, 508 (Utah 1976). “To allow a foreclosing creditor to control the right of redemption is inconsistent with the purpose of that right. . . .” *Brockbank, supra*, at ¶ 12, 32 P.3d at 993. Therefore, consistent with the overriding remedial policy behind redemption, a foreclosing creditor such as Reott cannot attack the transfer of the right by alleging fraud.

*Brockbank* illustrates this Court’s “liberal construction and application” of Rule 69(j) to thwart a foreclosing creditor’s attempt, with allegations of fraud, to preserve a bid “well below market value.” *Brockbank* arose out of divorce proceedings in the same Seventh District Court from which this appeal is taken. The creditor (former wife) held a judgment against the debtor (former husband) in the amount of \$43,000. Certain real property valued at \$45,000 secured payment of this judgment. The former wife executed on her judgment and the property was sold at sheriff’s sale. The former wife successfully credit bid only \$15,000 for the property.

Lacking the necessary funds to redeem the property, the former husband assigned his right of redemption to a friend for \$100. The friend then redeemed the property with a payment of \$16,653, in compliance with the requirements of Rule 69. The former wife asked the district court to set aside the assignment to the friend as a fraudulent transfer. As in the present action, the Seventh District on cross-motions for summary judgment reached the conclusion that transfer of the property right was fraudulent and declined to

recognize the exercise of the redemption right. *Brockbank* 2001 UT App 251 ¶ 7. This Court reversed that conclusion and directed entry of judgment in favor of the friend.

This Court's decision in *Brockbank* was driven not by any virtue on the part of the former husband and his friend or by any animus towards the former wife, but by the strong remedial policy behind the right of redemption. To emphasize the primacy of this policy, the *Brockbank* court included as footnote 3 a list of cases and quotes from numerous other jurisdictions articulating the identical policy. Among the authorities cited is *O'Neil v. General Sec. Corp.*, 4 Cal.App.4<sup>th</sup> 587, 5 Cal.Rptr.2d 712, 720-21 (1992), which explains that "the right of redemption discourages bidders at the judicial sale from intentionally underbidding for the property." "[B]ecause the redemptioner can recapture the property free of the lien for the amounts paid at the judicial sale," this right "discourages bidders from bidding less than the fair market value of the property" and "maximize[s] the amounts credited against the debt. . . ." *Id.*

As this Court emphasized in *Brockbank*, "[t]he amount bid . . . is within the creditor's control." 2001 UT App. 251 ¶ 14. As a consequence, the creditor takes the risk of redemption at the sale price "when bidding less than market value." *Id.* The creditor cannot be heard, after the fact, to claim fraud in the transfer of the right of redemption. This Court held in *Brockbank* that, "[n]otwithstanding any actual, subjective intent of [the debtor] 'to hinder, delay, or defraud' the creditor," the debtor could transfer the right of redemption and the party acquiring that right could exercise it." *Id.* ¶ 15 (quoting Utah Code Ann. § 25-6-5(1)(a) (1998)).

In the present action, the trial court refused to apply the *Brockbank* holding to

affirm Wasatch's redemption of the Section 32 interests. Reott's \$1.00 was manifestly not a "fair value" bid; rather, it was the most extreme example of a nominal underbid. In this action, Reott seeks to preserve his windfall. The trial court erred when it endorsed that windfall despite clear precedent and policy to the contrary. This Court should reverse the trial court's judgment because it rests on a fraud theory Reott cannot assert.

## **II. WASATCH HELD THE RIGHT TO REDEEM THE SECTION 32 INTERESTS AS MISSION'S SUCCESSOR IN INTEREST.**

The undisputed evidence establishes Mission's intent to transfer to Wasatch an interest in Section 32. This intent, and Wasatch's subsequent conduct consistent with that intent, were more than sufficient, under a "liberal construction and application" of redemption under Rule 69(j), to support Wasatch's status as successor in interest and its December 23, 2001, exercise of the right of redemption.

This Court in *Tech-Fluid* and *Brockbank* emphasized that the "remedial . . . character" of redemption mandated "liberal construction and application" of the statutes and rules conferring the redemption right. *Brockbank, supra*, ¶ 12, n. 3, and *Tech-Fluid, supra*, 787 P.2d at 1333. In *Winter Park Devil's Thumb Investment Co. v. BMS Partnership*, 926 P.2d 1253 (Colo. 1996), the Colorado Supreme Court examined the right of redemption in the context of a tax sale. The court affirmed the basic policy adopted by this Court: "Because redemption is favored over forfeiture, redemption statutes are liberally construed in favor of the party seeking redemption." *Id.* at 1255. Thus, "[t]hose holding 'a legal or equitable claim' in the property have the right to redeem prior to a tax sale." *Id.* (emphasis added). See *Tech-Fluid*, 787 P.2d at 1332

(holding that those “with an interest in the property” have a right to redeem) and *Clawson*, 535 P.2d at 78 (permitting redemption based only on an “equitable interest” in the property).

There can be no dispute that Wasatch asserts both legal and equitable claims to the Section 32 interests. Those claims rest entirely on actions taken by Mission as predecessor lessee and by SITLA as owner, affirmed thereafter by actions Wasatch took to manage and preserve the Section 32 interests. There can be no genuine dispute that Mission intended to convey the Section 32 interests to Wasatch, that SITLA as owner issued a lease and otherwise approved Wasatch as lessee of the Section 32 interests, and that Wasatch expended funds to maintain the leases on the Section 32 interests. Separately and together, these facts support Wasatch’s exercise of the right of redemption based on both legal and equitable claims to the Section 32 interests, however one might analyze the subjective equities of the Mission/Wasatch transfer.

While Judge Bryner paid lip service to a “liberal” standard and acknowledged that, absent his finding of fraud, Wasatch’s equitable interest would support a right of redemption (A-6), his legal analysis reflects a formality more appropriate to the most conservative title search, a formality that gutted the “remedial character” of redemption in this action.

This Court’s opinion in *Tech-Fluid* shows the error in the trial court’s formalistic approach in the present action. The *Tech-Fluid* lien creditor, sole bidder at a sheriff’s sale, acquired the subject gas well with a below-market credit bid. The debtor transferred its right of redemption to a third party, which proceeded to exercise that right. To

preserve its windfall, the creditor attacked the third party's redemption, arguing that (a) the third party was not the "successor in interest" and (b) the third party had failed to comply with certain technical requirements of Rule 69 in the exercise of the right.

This Court affirmed the lower court's rejection of the first ground: "'Successors in interest' clearly include assignees." *Id.* at 1331 n. 3. Moreover, this Court concluded that, in abandoning the well, the debtor's bankruptcy trustee had not retained the right to redeem: "It is inconsistent to suggest that a trustee, having abandoned property and consequently being divested of all interest therein, would still retain some right to redeem. . . ." *Id.* at 1332. Thus, the trustee did not have "to explicitly abandon" the right of redemption but merely had to manifest the intent to abandon the subject property. In the present action, Mission has manifested a like intent in every conceivable way.

With regard to the second ground, this Court adopted a standard of "substantial compliance" as the measure of adherence to Rule 69. The key consideration is "the likelihood of prejudice" affecting "a substantive right" as the result of non-compliance with formalities. *Id.* at 1333. Despite acknowledged deficiencies in the successor's compliance with Rule 69, the *Tech-Fluid* court refused to set aside the redemption. Rather, this Court concluded that adherence to the policies stated in *Loosley, supra*, mandated a "liberal construction" of the rule and a finding of substantial compliance.

The trial court committed error in refusing to give Rule 69 a liberal application, consistent with *Tech-Fluid*, by recognizing Wasatch as the sole party with a legal and equitable claim to the Section 32 interests sufficient to redeem those interests.

**a. Wasatch Is Mission's Successor In Interest Because SITLA, As Owner And Lessor Of Section 32, Transferred The Section 32 Interests To Wasatch.**

SITLA transferred the Section 32 interests to Wasatch. Mission has voiced no objection to this transfer. To the contrary, Mission expressly ratified the transfer and stood by while Wasatch managed the Section 32 interests, paid rentals on those interests to SITLA, and undertook and performed all duties of a lessee. Even Reott, during the time period when he was a judgment creditor with respect to the Section 32 interests, voiced no objection to this transfer or Wasatch's role as lessee. (Indeed, Wasatch's performance of the lessee's obligations was the sole reason that any viable lease rights existed for sale on August 9, 2001.<sup>12</sup>) The lease assignment forms accepted by SITLA and the subsequent lease agreement issued by SITLA support, at a minimum, a legal claim to the Section 32 interests sufficient to permit redemption by Wasatch.

The trial court refused to attach any legal consequence or probative value to the actions taken by SITLA. Rather, Judge Bryner found that the absence of Mission's name on the front side of the lease transfer forms voided the forms and rendered any approvals by SITLA a legal nullity.<sup>13</sup> R. 4814. Thus, under the trial court's reasoning, the State of

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<sup>12</sup> Sutton testified that Mission could not pay amounts then owing on the Section 32 leases, which "if not paid, would have resulted in the termination of those leases." R. 2516. *See* Utah Admin. Code R850-25-200(4), R580-25-300. Wasatch paid those amounts and others that came due. Tab H.

<sup>13</sup> The precise defect noted by the trial court is also found in the assignment of **ML 43541** from White River to Mission. R. 2530-33. In light of the fact that SITLA's form of assignment does not include a distinct signature line for those signing in a representative capacity as lessee-assignor, in contrast to those signing as assignee (see reverse side of the form), it is very likely that the defect voiding the Mission-Wasatch



Utah as landowner has no power to transfer lease interests in its property unless it has secured from all affected parties unblemished documentation supporting the transfer. Any actions taken on the strength of documentation appearing to manifest the parties' intention, even if entirely consistent with the parties' separate agreement and actual intent, are void *ex ante* and may be attacked and displaced long after the fact by those not a party to the transaction. This conclusion is both bad law and bad policy.

The SITLA documents were part of a four-step continuum establishing that Wasatch could exercise the right of redemption. First, Mission executed (correctly) the Letter Agreement promising to transfer the Section 32 interests to Wasatch. Second, Sutton executed the lease assignment forms in favor of Wasatch. Third, SITLA approved transfer of the Section 32 interests to Wasatch. Finally, Wasatch in compliance with its obligations to SITLA and Mission maintained the Section 32 interests and acted in all respects as successor lessee.<sup>14</sup> From this sequence of events, Wasatch had a sufficient legal and equitable claim to the Section 32 interests, as a matter of law under a "liberal construction" of Rule 69, to redeem those interests after Reott's \$1.00 bid. These facts control the issue of whether Wasatch can redeem, regardless of any purported fraud.

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transfer under the trial court's reasoning is to be found in numerous other assignment forms in the files of SITLA and not just those relating to **ML 43541**.

<sup>14</sup> Mission fully believed that it had conveyed the Section 32 interests to Wasatch. It walked away from all of the Section 32 leases except for that covering the Lavinia 1-32 Well. As of the date of the Sheriff's Sale, only Wasatch stood in a position to exercise the right of redemption with respect to the Section 32 interests. Reott's belated attack on Wasatch's status, as endorsed by the trial court, gives absolute assurance that no one can or will exercise the right of redemption to preserve the debtor's interest in the face of a \$1.00 bid.

**b. Wasatch Had An Enforceable Letter Agreement With Mission Covering The Section 32 Rights.**

The Letter Agreement also supports the validity of Wasatch's exercise the right of redemption and overcomes any belated claim of fraud. The trial court conceded that, "under Utah law . . . an equitable interest in property sold at a Sheriff's Sale would be sufficient to confer successor-in-interest status" and that, absent fraud, the Letter Agreement supported Wasatch's redemption of the Section 32 interests. A-6.

The attack on Wasatch's equitable title, first mounted by Reott long after the Sheriff's Sale, had as its sole purpose to preserve the \$1.00 credit bid. Both Reott and the trial court confined their analysis to the ultimate validity of the Letter Agreement in a hypothetical battle between Wasatch and either Mission or with some competing creditor or assignee. However, by the time he asserted fraud, Reott is none of these and no such entity advancing Reott's view of the transaction has surfaced in these proceedings. *See Harper v. Great Salt Lake Council, Inc.*, 1999 UT 34 ¶ 20, 976 P.2d 1213, 1218 (plaintiff had "no standing to object" to modification of agreement because he had "no cognizable interest" where he was not a party to the agreement or a third-party beneficiary).

The reality is that the Letter Agreement did not harm any creditor. Certainly, it has not harmed Reott in the least. As of the date on which Wasatch gave notice of redemption, no one had questioned the Letter Agreement; that agreement had not impaired any creditor's ability to realize on the Section 32 interests. (As previously noted, Wasatch's performance of its obligations under that agreement was the sole reason that the subject leases remained in force as of the date the Sheriff sold them to Reott.)

Mission and the non-foreclosing creditors have maintained complete silence with respect to any supposed inequities associated with the Letter Agreement. Only Reott, who enforced his three judgments against the Section 32 interests without impediment, has pursued an attack on the Letter Agreement. The trial court committed error in endorsing that attack by attempting to weigh the equities behind the Letter Agreement.

**c. The Letter Agreement Was Supported By Sufficient Consideration And Has Since Been Confirmed By Actual Performance.**

The trial court refused to attach legal significance to the Letter Agreement, in part, because of the erroneous conclusion that “no consideration was ever paid” in connection with that agreement. A-6. The facts demonstrate that Wasatch did make promises and payments as consideration for the promised transfer of rights and, thereafter, Wasatch did what it had promised to do. The law establishes that what Wasatch promised supports the existence of a contract and, if Wasatch failed in any way to perform, this would only open Wasatch to a claim by Mission for damages. *See Resource Management Co. v. Weston Ranch and Livestock Co.*, 706 P.2d 1028, 1036 (Utah 1985). (consideration consists of an “act or promises, bargained for and given in exchange for a promise”).

The Letter Agreement recited not only the granting of a right of first refusal with respect to a future drilling deal (the sole item of consideration acknowledged by Judge Bryner), but also Wasatch’s payment to Mission of \$3,696.40 and Wasatch’s undertaking of Mission’s past and future financial obligations to SITLA (and the BLM) under the leases covering the Section 32 interests (and other leases transferred). There is no dispute that Wasatch paid Mission the \$3,696.40 required under the Letter Agreement and, with

respect to the Section 32 interests, Wasatch made additional cash payments to SITLA of \$4,590, not including required geological and engineering work, after June 2000 to preserve the leases. Tab H. Judge Bryner makes no mention of this performance under the Letter Agreement. The monetary consideration alone supports the Letter Agreement. *See Territorial Savings, supra*, 781 P.2d at 460 (“assumption of . . . antecedent debts constituted *valuable* consideration for the conveyance. . . .” [emphasis in original]).

Judge Bryner confined his analysis of consideration to Mission’s “right to participate” in a future development deal. This limited analysis itself was flawed both because the trial court disregarded the undisputed chronology and because, if there were a failure of consideration, it would not void the Letter Agreement.

As to chronology, Wasatch promised Mission in the June 21, 2000 Letter Agreement a “right to participate.” That promise of future participation remained in force and subject to potential performance as of the date of the Sheriff’s Sale (August 9, 2001) *and* as of the date Wasatch served the Redemption Notice (December 23, 2001). The earliest date on which the facts would indicate any possible failure of this consideration would be at the time in May 2002 when Wasatch sold its Section 32 rights (and numerous others) to BBC rather than pursue a development deal. Any claim that “no consideration was ever paid” (as Judge Bryner found [*see* A-6]) must necessarily reference a point in time *after* December 23, 2001. Such a point in time has no relevance to the existence of a right of redemption on the date it was exercised by Wasatch.

Subsequent conduct may raise an issue of failure of consideration, but it does not establish a lack of consideration from the start. In *General Insurance Co. v. Carnicero*

*Dynasty Corp.*, 545 P.2d 502, 504 (Utah 1976), the court noted:

There is a distinction between lack of consideration and failure of consideration. Where consideration is lacking, there can be no contract. Where consideration fails, there was a contract when the agreement was made, but because of some supervening cause, the promised performance fails.

Thus, in *Coulter & Smith, Ltd. v. Russell*, 966 P.2d 852 Utah (1998), the Supreme Court in affirming this Court’s judgment considered whether non-performance of a promise — *i.e.*, failure of consideration — would render a contract void. The court cautioned against “confus[ing] the consideration necessary for contract formation with the consideration necessary to compel . . . performance.” *Id.* at 859-60.

The parties in *Coulter* signed a letter agreement in which the defendant granted an option in exchange for the plaintiff’s promise to develop the property subject to the option. The plaintiff delayed in developing the property. When the defendant undertook separate development plans, the plaintiff brought suit alleging breach of the letter agreement. The defendant argued that the letter agreement was void because it was not supported by consideration: the plaintiff was “not bound to proceed with the development of the property.” *Id.* at 859.

The Supreme Court noted: “It is not necessary for the promisor to render performance in order for us to find consideration; the reciprocal promise is sufficient consideration to form a contract.” *Id.* Non-performance “may constitute a failure of consideration that would relieve [the defendant] from his obligation to perform, but it was not a lack of consideration sufficient to void the option entirely.” *Id.* at 860. Put another way, “[i]f there is no consideration, there is no contract. If, on the other hand,

consideration fails because one party fails to perform, the other party's performance cannot be compelled." *Id.*

Thus, even setting aside the amounts actually paid by Wasatch and its actions to preserve the leases, the mutual promises exchanged between Wasatch and Mission on June 21, 2000, afforded sufficient consideration to support the formation of the Letter Agreement and its viability as of December 23, 2001, when Wasatch sought to redeem the Section 32 interests. Wasatch's rights as of that date included an equitable claim and title to those interests sufficient to make it a successor in interest under Rule 69. The fact that, some months later, Wasatch transferred the Section 32 interests to BBC rather than pursue the development deal referenced in the Letter Agreement did not alter the rights existing as of the date Wasatch gave notice of redemption.<sup>15</sup>

The Letter Agreement was supported by adequate consideration and, either alone or in tandem with subsequent actions taken by Sutton, SITLA and Wasatch, establishes Wasatch as a successor in interest entitled to redeem the Section 32 interests. This Court should reverse the trial court's grant of summary judgment in favor of Reott and enter judgment in favor of Wasatch and BBC because Wasatch was Mission's designated

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<sup>15</sup> Even as things turned out, Mission would retain a cause of action against Wasatch for performance of any unfulfilled promise set forth in the Letter Agreement or for rescission of that Agreement. To the extent Wasatch failed to honor the promised "right to participate," Mission would have a claim against Wasatch and, as a judgment creditor of Mission, Reott at one time might have executed on that claim. Instead, Reott chose the more direct route of simply executing on the Section 32 interests. As already noted, the flaw in Reott's chosen course was to credit bid \$1.00 for all rights acquired at the Sheriff's Sale. Neither Wasatch nor Mission bears any responsibility for this self-serving but ill-considered strategy.

successor in interest with respect to the Section 32 interests under a liberal construction and application of Rule 69.

**III. THE TRIAL COURT MADE IMPERMISSIBLE FINDINGS OF FACT IN CONCLUDING THAT FRAUD BARRED WASATCH FROM EXERCISING A RIGHT TO REDEEM.**

The trial court's adoption of Reott's argument that the Letter Agreement was void as a fraudulent conveyance not only eliminates any right of redemption, but opens the door for execution of the deficiency judgment against other BBC leases without any opportunity for Wasatch or BBC to test the fraud theory at a trial of the merits. As a consequence, whatever this Court's disposition of the redemption issue, it must separately address and reverse the trial court's finding of fraud.

This Brief addresses this error last because logically it is most useful first to consider the law applicable to the facts not in dispute before addressing a subject matter so fact driven and so profoundly in dispute and a result below so at variance with the procedures governing summary judgment.

**a. The Facts On Which Judge Bryner Relied In Finding The Presence Of "Badges Of Fraud" Were, To The Extent Deemed "Material" To The Claim Of Fraud, Disputed On The Record.**

The trial court expressly adopted Reott's representation that Wasatch had conceded nine "badges of fraud."<sup>16</sup> A-6. This was a deviation from the basic standard

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<sup>16</sup> Judge Bryner cited specific pages in Reott's opening and reply memoranda for the proposition that Wasatch had not disputed nine of the eleven "badges" identified by Reott. A-6. In contrast, in the 128 allegedly "undisputed facts" set forth in the Statement of Undisputed Facts prepared by Reott and entered by the trial court, Reott did not specifically identify a single fact as constituting a "badge of fraud" nor is there any separate finding or conclusion of law addressing this central point. *See generally* Tab C.

under Utah R. Civ. P. 56(c) for granting summary judgment. To prevail on such a motion, the moving party must demonstrate that “there is no genuine issue as to any material fact. . . .” What is “material” depends on the legal context. *Cf.*, *Burnham v. Bankers Life & Casualty Co.*, 470 P.2d 261, 263 (Utah 1970) (materiality of fact misrepresented on an insurance application was for the jury); *Jackson v. Dabney*, 645 P.2d 613, 614 (Utah 1982) (whether conduct met “required standard” presented an issue of fact). Even when the bare fact is not disputed, there must be no “genuine issue” regarding the *meaning* or *materiality* of the fact within the specific legal context.

Here the issue or context was fraud. Reott did not offer his “facts” as undisputed in a vacuum; he offered them as undisputed “badges of fraud.”<sup>17</sup> As detailed above, in each instance, Wasatch responded that, when isolated from any legal context, certain fairly innocuous facts regarding the transfer were correctly stated. However, once labeled as a “badge of fraud” (and thereby transformed into “material” evidence of the parties’ purposes and the *bona fides* of the transaction), there did exist genuine issues regarding each “fact” because additional evidence, if believed, would demonstrate that these were not indicia of fraud and, thus, not “material.” *See* pages 13 through 17 above.

A few examples will suffice. Reott argued, and the trial court found, that Wasatch’s failure to record the SITLA lease assignments and the subsequent lease was a

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The Order and the Statement of Undisputed Fact entered by the trial court, standing alone, provide no guidance as to what Judge Bryner believed the “badges of fraud” to be or, for that matter, why he thought them to constitute “badges of fraud.”

<sup>17</sup> “Badges of fraud” are “‘certain indicia of fraud’ . . . from which actual intent may be inferred. . . .” *Tolle v. Fenley*, 2006 UT App 78 ¶ 27, 132 P.3d 63 (quoting *Dahnken, Inc. v. Wilmarth*, 726 P.2d 420, 423 (Utah 1986)).



“badge of fraud.” Wasatch disputed this by showing that Utah law does not require recording of leases and that the SITLA leases and lease assignments, unlike similar private conveyances, are separately maintained as public records by SITLA, easily accessed by creditors and other interested parties. Thus, Wasatch did not dispute the basic fact assertion, but it demonstrated that, seen in context, the bare assertion was not material because it was not a “badge of fraud.”

Reott pointed to Sutton’s flawed execution of the lease assignment forms as another “badge of fraud.” Wasatch pointed out that (a) the form is confusing in that it does not provide a line for signing in a representative capacity (contrasting the signature line for the “assignor” on the front of the form with that for the “assignee” on the back of the form) and (b) the defect cited (failure to identify the assignor) was likewise present in the White River lease assignment by which Mission took title to **ML 43541**. Again, while the isolated fact was not disputed, its meaning in the context of “badges of fraud” was most certainly in dispute.

Reott cited the “carve out” of the Lavinia 1-32 Well and surrounding acreage from the June 21, 2000, Letter Agreement as a further “badge of fraud.” Wasatch made no secret that this “carve out” was intended to isolate that most developed and what Mission viewed as the most valuable portion of Section 32 — the Lavinia 1-32 Well. No creditor suffered any detriment from, nor was there any conceivable detriment associated with, the “carve out.” All of Section 32 remained available to creditors. Reott’s attempt to characterize the “carve out” as sinister through the “badges of fraud” verbiage is simply that: an attempt to characterize through labeling what was in genuine dispute.

A final example of such disputed “badges of fraud” is the question of Sutton’s authority. Reott claimed that, because Mission’s Operating Agreement required a majority of the four Mission managers to approve all company decisions, the transfer of the Section 32 interests without approval of all four managers is a “badge of fraud.” However, this was precisely how Mission earlier assigned the BLM leases to Wasatch, how Mission accepted assignment of the Section 32 leases from White River, and how Reott himself came to be a creditor of Mission — through actions taken on the sole authority of Sutton as Mission’s only manager after 1998. R. 2523-24, 2530-33, 5421. Deviation from the Operating Agreement *may*, upon a full hearing of the evidence, point in the direction of fraud but it is certainly not an undisputed *material* fact at this point.

With regard to each “badge of fraud,” the trial court accepted without question Reott’s characterization of the evidence in the face of contrary facts supporting an entirely different, benign view of the same facts. In short, the trial court weighed the evidence and embraced Reott’s view, resolving the numerous inconsistencies and ambiguities in favor of Reott as moving party. This was error. Wasatch was entitled to an evidentiary hearing on the claim that its conduct or that of Mission constituted “badges of fraud.” The facts advanced may ultimately be deemed to have the meaning – the “materiality” – assumed by the trial court, but that determination cannot rest on the present record without the benefit of a trial. *See Pete v. Youngblood, supra*, 2006 UT App 303 ¶ 24 (plaintiff entitled decision “by the trier of fact” on inference of negligence raised by *res ipsa loquitor* despite exclusion of expert).

By finding facts undisputed in isolation to constitute admissions in the highly

disputed context of fraud, the trial court committed reversible error.

**b. Even If Facts Cited As “Badges Of Fraud” Were Not In Dispute, Such Facts Are Only Potential Indicia Of Fraud, Requiring A Hearing Of The Evidence Before The Trial Court Could Properly Draw Any Inference Of Fraud.**

Judge Bryner’s most significant departure from the procedures and analysis mandated by Rule 56 was his adoption of Reott’s argument that, as matter of law, Wasatch’s purported concession of nine “badges of fraud” mandated a determination that the Letter Agreement was tainted with fraud. Based on this finding, the trial court held that, despite the fact that the Letter Agreement cured any defect in the lease assignments and “confer[red] equitable title on Wasatch, . . . the purported transfers were fraudulent and therefore conveyed no equitable or legal title to Wasatch.” A-6. To so conclude, the trial court not only adjudged facts otherwise not “material” to constitute “badges of fraud,” but he compounded error by aggregating those “badges” and drawing the inference that the June 2000 transfer of the Section 32 interests was fraudulent.

The controlling authority is this Court’s opinion in *Territorial Savings*. There, the Court held that resolution of any issue of fraud on summary judgment generally constitutes legal error. In *Territorial Savings*, the trial judge had granted summary judgment based on a finding that certain facts, allegedly constituting “badges of fraud,” could not support, as a matter of law, a finding of actual fraud in the transfer of property.

This Court reversed. In so doing, the Court explained the legal significance of the phrase “badges of fraud,” which both Reott and Judge Bryner used freely in this action without explanation. Such “badges” are only “indicia of fraud” from which actual fraud

“may be inferred. . . .” *Id.* at 462 (quoting from *Dahnken, supra*) (emphasis added). Such “facts . . . throw suspicion on a transaction, and . . . call for an explanation. . . . [T]hey are signs or marks of fraud. *They do not of themselves or per se constitute fraud. . . .*” *Id.* (quoting *Montana Nat’l Bank v. Michels*, 631 P.2d 1260, 1263 (Mont. 1981)) (emphasis added). While such facts have “a tendency to show the existence of fraud,” “their value as evidence is relative not absolute.” *Id.* Because “[a]ctual fraud is never presumed, but instead must be established by clear and convincing evidence,” such “badges of fraud” are “not usually conclusive proof” and “are open to explanation.” *Id.* Thus, “[f]raudulent intent is ordinarily considered a question of fact. . . .” *Id.*

Judge Bryner improperly drew the inference from the isolated facts regarding the Letter Agreement, not only that these facts were each “badges of fraud,” but that by the sheer number of such “badges” Reott had established fraud as a matter of law. In so ruling, the trial court disregarded extensive offsetting facts, explanation and argument refuting the notion that Wasatch’s acquisition of the Section 32 interests was a fraudulent conveyance. The *Territorial Savings* court noted, in the face of similar argument regarding indicia of bad faith, that such considerations “involve[ ] a subjective interpretation of all of the surrounding circumstances” and “[are] not susceptible to a bright-line test.” 781 P.2d at 461.

It is important to emphasize that the trial court’s legal error in this regard has far-reaching effect, not only affirming the under market \$1.00 purchase of the Section 32 interests at the Sheriff’s Sale, but impacting other issues still before the trial court as follows:

1. The trial court must determine whether or not BBC's actions taken on Section 32 acreage subject to redemption (but for the finding of fraudulent conveyance) constitute a trespass and hear evidence to ascertain any damages associated with BBC's activities on those portions of Section 32 transferred by Mission to Wasatch.

2. Reott has indicated his intent to lay claim to valuable improvements that BBC made to Section 32 based on BBC's very reasonable belief that, as lessee of record with SITLA and party to the Letter Agreement, Wasatch had the right to redeem the property.

3. Most ominously, Reott threatens to enforce his \$238,594 deficiency judgment (the amount remaining after deducting \$1.00 credit for the Sheriff's Sale bid) against the eight federal leases totaling 7,460.09 acres transferred pursuant to the Letter Agreement. He has already filed *lis pendens* against these properties (although some are not in Carbon County)<sup>18</sup> and appears prepared to argue that the trial court's holding regarding the Letter Agreement relieves him of any burden to further prove fraudulent conveyance and entitles him to convene further sheriff's sales to enforce his deficiency judgment against properties transferred pursuant to the Letter Agreement.

In summary, the impact of the trial court's finding of a fraudulent conveyance, without affording Wasatch or BBC the benefit of a trial, reaches well beyond the simple question of title to the Section 32 interests. This holding, which now infects the entire

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<sup>18</sup> Reott has filed *lis pendens* and clouded the title to 57 oil and gas leases held by BBC, only six of which were the subject of the Sheriff's Sale (these include the BLM leases). The *lis pendens* encompass 28,720.44 acres and 11 wells (other than the Lavinia 1-32 Well). Six of these leases, totaling 2,760.76 acres and one well, are not even in Carbon County, the only county in which proceedings on Reott's judgments are pending.

proceedings, rests on Judge Bryner's determination that certain facts were "badges of fraud" and his inference that such "badges" were not, at the summary judgment stage, mere "indicia" but irrefutable proof of actual fraud in the transaction. This holding was error.

## CONCLUSION

Justice Traynor of the California Supreme Court, in *Salsbery v. Ritter*, 306 P.2d 897 (Cal. 1957), after surveying the history of redemption including "much oppressive speculation upon the necessities of the debtor, . . ." [Kent, *Commentaries*, 14<sup>th</sup> ed., vol. 4, p. 431], "concluded that "one of the primary purposes of statutory redemption is to force the purchaser at the execution sale to bid the property in at a price approximating its fair value." *Id.* "To effectuate its purpose," Justice Traynor concluded, the redemption statute "must be construed to encourage redemption. . . ." *Id.* See also *Moore v. Hall*, 58 Cal. Rptr. 70, 73 (1<sup>st</sup> Dist. Cal. App. 1967).

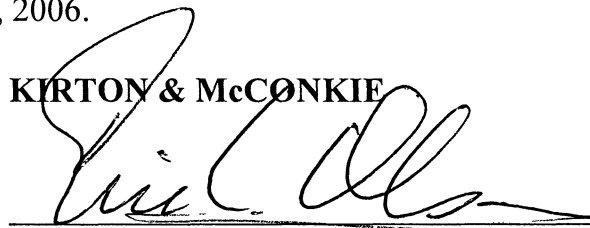
The trial court's refusal to recognize Wasatch as a successor in interest, entitled to exercise the right of redemption with respect to the Section 32 interests, runs counter to settled legal authority and the public policy stated by Justice Traynor above and clearly echoed by Utah appellate courts. The result in the trial court constitutes judicial endorsement of a most "oppressive speculation" on the part of Reott as he attempted to acquire for a credit bid of \$1.00 not only the Lavinia 1-32 Well (which he will keep whatever the outcome of this appeal) but also the BLM leases (denied him by the trial court) and the Section 32 interests.

In the end, the trial court has not only awarded Reott all of Section 32 for the price

of \$1.00 but has opened the door for him to enforce his remaining judgment of \$238,594 against BBC's leases without necessity of a trial based on a summary judgment finding of fraudulent conveyance. This result as to both the Section 32 interests and the fraudulent conveyance is wrong and should be reversed. This Court should rule that (a) Wasatch has the right to redeem the Section 32 interests and (b) the trial court could not determine the issue of fraudulent conveyance on a motion for summary judgment.

DATED this 15<sup>th</sup> day of September, 2006.

**KIRTON & McCONKIE**

A handwritten signature in black ink, appearing to read "Eric C. Olson", is written over a horizontal line.

Eric C. Olson  
Matthew K. Richards

*Attorneys for Appellant Wasatch Oil & Gas,  
LLC and related parties*

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*Attorneys for Appellant Bill Barrett  
Corporation*

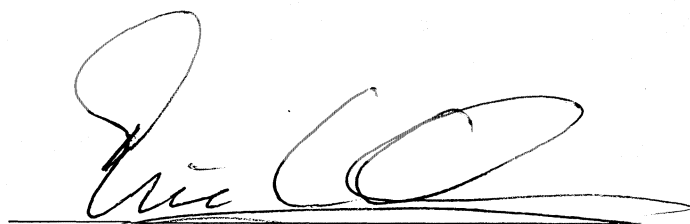
## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CONSOLIDATED BRIEF OF APPELLANTS** was served this 15<sup>th</sup> day of September, 2006, by mailing on said date two copies thereof by United States mail, first class postage prepaid, addressed to:

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*Attorneys for Bill Barrett Corporation*

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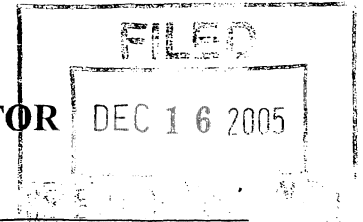
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# Addendum

Tab A

IN THE SEVENTH DISTRICT COURT IN AND FOR  
CARBON COUNTY, STATE OF UTAH



WASATCH OIL & GAS, L.L.C., A )  
Utah Limited Liability Company, )

Plaintiff,

VS. )

EDWARD A. REOTT, et al., )

Defendants. )

**RULING ON WASATCH'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
RE: REDEMPTION ISSUES**

AND

GOAL, L.L.C., A Utah limited liability )  
company, as the real party in interest to the )  
rights of Edward Reott, Key Energy )  
Lien and J-West Oilfield Lien, and )  
REGOAL INC., A Pennsylvania )  
Corporation, )

Counterclaim, Third Party )  
and Crossclaim Plaintiffs, )

VS. )

WASATCH OIL & GAS., et al, )

Third Party, Counterclaim )  
and Crossclaim Defendants. )

**RULING ON REOTT'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT FOR QUIET TITLE,  
FRAUDULENT CONVEYANCE,  
TRESPASS, CONVERSION, AND  
TRESPASS TO CHATTELS**

Civil No. 010700991

Judge Bryce K. Bryner

On April 15, 2004, the plaintiff filed a *Motion for Partial Summary Judgment* supported by a memorandum to which the defendant's filed a *Memorandum in Opposition*. The Reott defendants also filed a *Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance*. Each party filed a responsive memorandum and a *Reply*. Bill Barrett Corporation also filed a memorandum in opposition to the Reott Parties' *Motion for Partial Summary Judgment Re: Quiet Title, Fraudulent Conveyance* and joined in the position advocated by the

plaintiff Wasatch. The court heard oral argument, allowed counsel to submit post-hearing memorandum, and took the matter under advisement.

### I. Brief Factual Background

Reott obtained a judgment against Mission Energy (hereinafter “Mission”) and purchased two other judgments that had been previously obtained against Mission. Reott executed on the three judgments at a Sheriff’s Sale on August 9, 2001, which involved oil and gas interests in four section of land in Utah: 27, 32, 33 (collectively the “BLM” Leases) and portions of 32 (the “SITLA” Leases). Reott was the only bidder at the sale and bid \$1.00. Wasatch, who claims it was the successor-in-interest to Mission prior to the Sheriff’s Sale, filed with the court and sent two notices of redemption to Reott and tendered a check in the amount of \$1.06, which includes interest, within the 6 month redemption period after the sale under Rule 69(j) URCP. The tender was rejected by Reott.

On February 9, 2002, Reott transferred his title to the Sheriff’s Sale Properties to Regoal, Inc., and on March 6, 2002, the Sheriff of Carbon County signed a Sheriff’s Deed to Regoal. By a Purchase and Sale Agreement dated April 30, 2002, BBC acquired all of Wasatch’s right, title and interest in and to the Sheriff’s Sale Properties.

### II. Issue Presented

The main issue presented by the reciprocal motions for partial summary judgment is: Did Wasatch properly exercise a valid right of redemption with respect to the Sheriff’s Sale Properties pursuant to Rule 69(j) of the Utah Rules of Civil Procedure?

### III. Relief Sought by the Parties

A. Wasatch: Wasatch Oil & Gas, L.L.C. (hereinafter “Wasatch”) seeks a ruling that Wasatch held and validly exercised a right of redemption to certain oil and gas interests in Sections 27, 33, 34, and portions of Section 32 (hereinafter collectively referred to as the “Sheriff’s Sale Properties”) which were acquired by the defendant Edward Reott (hereinafter “Reott”) at a Sheriff’s Sale on August 9, 2001. Wasatch also requests a ruling that it holds title

to the said oil and gas interests free and clear of any interest of the defendants by reason of its exercise of the right of redemption.

B. Bill Barrett Corporation: In April of 2002, Bill Barrett Corporation (hereinafter “BBC”) purchased the interests of Wasatch in the Sheriff’s Sale Properties and therefore claims that it is the owner of the Sheriff’s Sale Properties, less a 40 acre section of the Section 32 Leases and the Lavinia Well and all appurtenant equipment, pipelines, etc. BBC joins with Wasatch in urging the court to find that Wasatch was a successor-in-interest to Mission and that Wasatch properly exercised a right of redemption.

C. Reott: The Reott defendants urge the court to hold that neither Wasatch nor BBC has legal or equitable title to the Sheriff’s Sale Properties because Wasatch was and is not a successor in interest to Mission and therefore cannot redeem the Sheriff’s Sale Properties. Reott requests the court to quiet title to the Section 32 Leases in Reott.

#### IV. Analysis

At the outset, the court finds that Reott, as the purchaser at the sheriff’s sale and the recipient of the sheriff’s deed, received the property subject only to redemption by one actually authorized to redeem. As such, Reott has standing to challenge Wasatch’s purported title and has standing to dispute Wasatch’s claim that Wasatch was a lawful successor-in-interest to Mission. Because BBC acquired all of Wasatch’s right, title, and interest in and to the Sheriff’s Sale Properties, any consequence to Wasatch in this ruling should also be ascribed to BBC as Wasatch’s successor.

##### Part I. The BLM Leases

The BLM owns the land underlying the leases in Sections 27, 33, and 34. BLM forms were used to transfer the leases in those sections to Wasatch in June of 1999, the transfers were approved by the BLM, and those leases were sold at the August 9, 2001 Sheriff’s Sale. The court finds that Wasatch is in the chain of title to those leases, which Reott does not dispute, and is a successor-in-interest to Mission with respect to the BLM Sections and, as such, had a right to

redeem those properties from the Sheriff's Sale under the provisions of Rule 69(j).

Reott concedes that Wasatch, and now its successor BBC, can redeem the BLM properties, but only if Wasatch pays the prior full amount of the J-West lien, the Key Energy lien, and the judgment in favor of Reott, the combined total of which is approximately \$280,000.00.

The court finds, as a matter of law, that Reott's lien interests in the Sheriff's Sale properties are extinguished because the sale on a judgment exhausts it as to the property sold. The court finds that under Brockbank v. Brockbank, 32 P.3d 990 (Utah App. 2001) and Tech-Fluid Servs. Inc. V. Gavilan Operating, Inc., 787 P.2d 1328 (Utah Ct. App. 1990) the amount to be paid by Wasatch to redeem the BLM properties is the amount for which they were purchased by Reott at the Sheriff's Sale together with interest and any other costs required by the provisions of Rule 69(j).

#### Part Two: The SITLA Leases

A resolution of the question whether Wasatch is a successor-in-interest to Mission for purposes of the SITLA Leases (Section 32, less the Lavinia 1-32 well and limited adjacent forty acres to a specified depth, which is not disputed by Wasatch) necessitates consideration of the following:

##### A. Do the Three Mineral Lease Assignment Forms Executed by Justin Sutton Transfer Mission's Legal Title in the Section 32 Leases?

The undisputed facts show that prior to any purported transfer to Wasatch, Mission was the lessee of record of the Section 32 Leases. It is also undisputed that Justin Sutton was a manager at Mission at the times relevant herein and that he himself held no interest in the Section 32 Leases.

Reott claims that Wasatch is not a successor in interest to Mission because Justin Sutton signed the three Mineral Lease Assignment Forms in favor of Wasatch on June 23, 2000 in his own individual capacity and not as an agent for Wasatch. Further, Reott asserts that Wasatch paid no consideration for the transfers.

Wasatch responds that Sutton, as the manager for Mission, signed the three mineral lease assignment forms on the Section 32 Leases as an agent for Mission even though his capacity as an agent or manager is not stated on the face of the assignment forms. Wasatch further claims that the failure to specifically designate his capacity is only a “technical” defect and is not fatal to Wasatch’s title to the Section 32 Leases because: (1) the assignments were approved by SITLA despite the absence of Sutton’s title; (2) the reverse side of each of the assignment forms contains a statement by Wasatch that it accepts the assignments; and (3) the June 21, 2000 Letter Agreement signed two days before the assignments confirms the intent to transfer to Wasatch.

The court finds as a matter of law that the failure to identify Sutton on the assignment forms as a person authorized to execute the assignments on behalf of Mission results in no title passing from Mission to Wasatch. Interests in non-extracted minerals are interests in real property, and any attempts to convey must be expressed in writing and clearly identify the grantor, particularly where the grantor is a business or corporate entity. Although Wasatch argues that the court should liberally construe the definition of successor-in-interest under Rule 69(j) to implement remedial policies for redemption, the court finds that even a liberal construction cannot overcome the fact that the conveyances from Mission to Wasatch did not comply with a basic rule of conveyances, i.e., the assignor must be clearly identified.

Moreover, the approval by SITLA has no legal effect on the validity of the transfer and does not, of itself, yield a legal conclusion that title to the Section 32 Leases is vested in Wasatch. It is only an approval of the apparent transaction, which approval, under SITLA’s regulations, cannot be withheld if the assignment is properly executed. Furthermore, the acceptance of the conveyance by Wasatch on the reverse side of the assignment forms only reflects Wasatch’s intent to accept the conveyance - it does not reflect the intent of Mission to convey.

In summary, the assignments from Sutton in his own capacity were equivalent to “wild deeds” and were therefore insufficient to transfer Mission’s interests in the Section 32 Leases to Wasatch.

## II. Does the June 21, 2000 Letter Agreement Convey Equitable Title to Wasatch?

It is clear under Utah law that an equitable interest in property sold at a Sheriff's Sale would be sufficient to confer successor-in-interest status on Wasatch, and Wasatch claims such an interest in the Section 32 and other property (less the Lavinia well and adjacent acreage to a certain depth) by virtue of the June 21, 2000 Letter Agreement. Reott disputes Wasatch's claim of equitable title on the basis of fraudulent conveyance.

Utah law is clear that property transferred by fraudulent conveyance confers no equitable title. Beginning on page 12 of its memorandum, Reott cites 11 "Badges of Fraud" surrounding Mission's transfer of its interests in the Section 32 Leases to Wasatch. Wasatch, in its Reply, addresses only two of them and the court therefore finds that Wasatch concedes 9 of them. (See p. 3 of Reott's Reply memorandum). Utah case law indicates that even one badge of fraud is sufficient to invalidate a conveyance and the court therefore finds that Wasatch received no equitable title because of fraudulent conveyance.

The court also finds that the June 21, 2000 Letter agreement does not convey equitable title to Wasatch because no consideration was ever paid. The Letter Agreement provided that Mission would transfer its interest in certain Leases, including the Section 32 Leases, in exchange for the right to participate in a drilling deal that Wasatch "may be able" to put together. An interest in a drilling deal that admittedly may not come to pass does not constitute consideration.

In conclusion, although Wasatch argues that the June 21, 2000 Letter Agreement cures any defect (failure to insert the title of "manager" or "agent") in the three Mineral Lease Assignment Forms and confers equitable title on Wasatch, the court finds the purported transfers were fraudulent and therefore conveyed no equitable or legal title to Wasatch.



#### V. Trespass, Conversion, and Trespass to Chattels

The Reott parties have had title to the Section 32 Leases since the February 9, 2002 when the Sheriff's Deed was issued. Subsequent to that date BBC developed Section 32 by drilling two wells and reported to Division of Oil, Gas and Mining that the two wells were producing gas as of December 4, 2003. The court therefore finds as a matter of law that BBC is liable for trespass as a result of the drilling of the two wells. The court also finds as a matter of law that BBC is liable to the Reott parties for any minerals converted on Reott's Section 32 Leases since February 9, 2002, with the amount to be determined at trial.

The court also finds that BBC forcibly removed the Lavinia Pipeline which caused the meter house to be pulled off its foundation, bending the oil production line, and damaging the connection to the oil tank causing an oil spill. BBC is liable for these damages together with any other damages that may be proved in an amount to be determined at trial.


#### VI. Summary

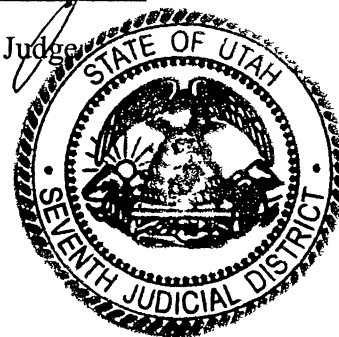
After due consideration of the memorandum and the arguments of counsel the court finds that Wasatch is a successor-in-interest to Mission with respect to the BLM properties and may redeem them by paying to Reott the amount that Reott bid at the Sheriff's Sale. The court is persuaded that Wasatch is not a successor-in-interest to Mission as to the Section 32 properties and therefore cannot redeem those properties because (1) Wasatch does not have legal title based on three assignment forms signed by Justin Sutton in his individual capacity, and (2) Wasatch does not have equitable title by reason of fraudulent conveyance. Title to the Section 32 properties sold at the sheriff's should therefore be quieted in the Reott Parties.

BBC is liable to the Reott parties for any minerals converted on Reott's Section 32 Leases since February 9, 2002, in an amount to be determined at trial. BBC is also liable in damages for resulting from forcibly removing disconnecting the Lavinia Pipeline.

Defendants' counsel is directed to draft and submit to the court proposed *Findings of Fact* and a *Partial Summary Judgment* which are not inconsistent with this ruling.

DATED this 15<sup>th</sup> day of December, 2005.

  
Bryce K. Bryner, Judge



CERTIFICATE OF NOTIFICATION

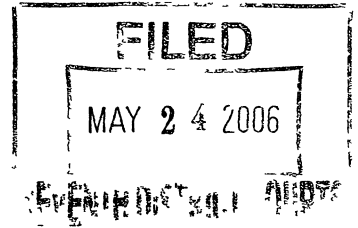
I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

METHOD	NAME
Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
Mail	ERIC C OLSON ATTORNEY PLA POB 45120 SALT LAKE CITY UT 84145-0120
Mail	NICK J SAMPINOS ATTORNEY 190 N CARBON AVE PRICE UT 84501
Mail	CAROLYN MCINTOSH ATTY 1660 Lincoln Street Suite 1900 Denver CO 80264

Dated this 16<sup>th</sup> day of December, 2025.

  
\_\_\_\_\_  
Deputy Court Clerk

Tab B



*Proposed and prepared by:*  
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GARY E. DOCTORMAN (0895)  
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Facsimile: (801) 536-6111

*Attorneys for Edward A. Reott, Goal, L.L.C., and  
Regoal, Inc*

---

**IN THE SEVENTH JUDICIAL DISTRICT COURT  
CARBON COUNTY, STATE OF UTAH**

---

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company,

Plaintiff,

vs.

EDWARD A. REOTT, an individual, KEY  
ENERGY SERVICES, INC., a Maryland  
corporation dba Key Energy Services, Inc. Four  
Corners Division, J-WEST OILFIELD  
SERVICE, INC., a Utah corporation, MISSION  
ENERGY, LLC, a Colorado limited liability  
company, and ALL OTHER UNKNOWN  
PERSONS OR PARTIES CLAIMING ANY  
RIGHT, TITLE, LIEN OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT HEREIN,

Defendants.

**ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT**

**WASATCH'S MOTION FOR SUMMARY  
JUDGMENT RE: REDEMPTION,**

**AND,**

**THE REOTT PARTIES' MOTION FOR  
SUMMARY JUDGMENT ON QUIET  
TITLE, FRAUDULENT CONVEYANCE,  
TRESPASS, CONVERSION AND  
TRESPASS TO CHATTELS**

Case No. 010700991

Judge ~~Bryce K. Bryner~~

---

GOAL, L.L.C., a Utah limited liability company, as the real party in interest to the rights of Edward Reott, Key Energy Services Lien and J-West Oilfield Lien, and REGOAL, INC., a Pennsylvania corporation,

Counterclaim, Third Party and  
Cross claim Plaintiffs,

vs.

WASATCH OIL & GAS, L.L.C., a Utah limited liability company, MISSION L.L.C., a Colorado limited liability company, WASATCH OIL & GAS PRODUCTION CORPORATION, a Utah corporation, WASATCH GAS GATHERING, a Utah limited liability company, BILL BARRETT CORPORATION, a Maryland corporation, and all other persons unknown claiming any right, title, estate or interest in or a lien upon the real property described herein adverse to the complainant's ownership or clouding his title thereto,

Third Party, Counterclaim and  
Cross claim Defendants.

---

On April 15, 2004, Plaintiff Wasatch Oil & Gas, LLC ("Wasatch") filed a Motion for Summary Judgment. On April 30, 2004, the Reott Parties filed a Memorandum in Opposition in addition to its own Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels. Wasatch and Bill Barrett Corporation ("BBC") each filed opposing memoranda. After full consideration of the briefs

submitted by all parties, consideration of supplemental submissions, oral arguments held on January 24, 2005 and March 18, 2005, and post-hearing briefing submitted by all parties, the Court—pursuant to Rules 52(a), 54(b), 56(c), and 56(d) of the Utah Rules of Civil Procedure—enters the following **ORDER GRANTING PARTIAL SUMMARY JUDGMENT** on Wasatch’s Motion for Summary Judgment Re: Redemption, and, the Reott Parties’ Motion for Summary Judgment on Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Wasatch’s Motion for Partial Summary Judgment Re: Redemption Issues is granted with respect to all properties formerly owned by Mission Energy (“Mission”) in Sections 27, 33 and 34 of Township 12 South, Range 16 East, Carbon County, including the BLM Mineral Leases U-08107, SL-069551 and SL-071595 (the “BLM Leases”). Wasatch may redeem by payment to Regoal, Inc., through the Carbon County Sheriff of \$1.06, plus any other costs under Rule 69, within thirty (30) days of the entry of this final Judgment. If Wasatch redeems, title to the BLM Lease and all real property fixtures, including all equipment, pipelines and any existing APDs is quieted in BBC, Wasatch’s successor in interest, and the sheriff is directed to issue a corrected Sheriff’s Deed to BBC for all such properties. Wasatch’s Motion for Partial Summary Judgment Re: Redemption Issues is denied with respect to its attempt to redeem any former Mission property in Section 32.

2. The Reott Parties’ Motion for Partial Summary Judgment for Quiet Title and Fraudulent Conveyance against the Wasatch Entities and BBC is granted with respect to all

properties formerly owned by Mission Energy (“Mission”) in Section 32 of Township 12 South, Range 16 East, Carbon County, including the SITLA Leases in Section 32—ML43541, ML43541-A and ML43798 (“SITLA Leases”)—and all real property fixtures, including all equipment, pipelines and any existing APDs (the SITLA Leases, fixtures and other personal property collectively referred to as “Section 32 Property”). Title to the Section 32 Property is quieted in the Reott Parties as of February 9, 2002, and neither the Wasatch Entities nor BBC have any record, legal or equitable interest in or title to such property. As such, the sheriff is directed to issue a corrected Sheriff’s Deed to the Reott Parties for the Section 32 Property, and the Reott Parties are granted immediate possession and all the rights and benefits in and to the Section 32 Property.

3. Pursuant to Rule 54(b), Utah Rules of Civil Procedure, because this is a multi-claim action involving multiple parties, the Court directs an entry of final Judgment quieting title in the Reott Parties to the Section 32 Leases, ML43541, ML43541-A and ML43798, and all real property fixtures, including all equipment, pipelines and any existing APDs in Section 32. The Court finds no just reason to delay entry of final judgment. BBC and the Wasatch Entities are not the successors-in-interest to Mission with respect to the Section 32 Property, and therefore cannot redeem the former Mission property sold. The Court finds that the Reott Parties have had title to the Section 32 Property since receiving the Sheriff’s Deed on February 9, 2002.

4. Pursuant to Rule 54(b), Utah Rules of Civil Procedure, because this is a multi-claim action involving multiple parties, the Court directs an entry of final Judgment quieting title in BBC to the BLM Leases and all real property fixtures, including all equipment, pipelines and



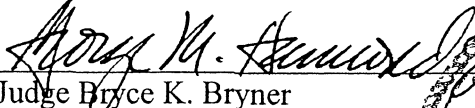
any existing APDs in Sections 27, 33 and 34. The Court finds no just reason to delay entry of final judgment. BBC and the Wasatch Entities are successors-in-interest to Mission, and therefore may redeem the former Mission property sold in Sections 27, 33 and 34, under the procedure prescribed above.

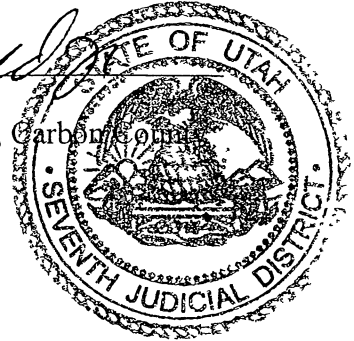
5. Summary Judgment is granted to the Reott Parties on their claims against BBC for trespass, trespass to chattels and conversion. As such, BBC is liable, as a matter of law, to the Reott Parties for all damages arising from BBC's willful, knowing and intentional entry upon the Section 32 Leases and the Lavinia Well Site, and its actions: (a) in drilling two new wells on Section 32, and in converting any and all oil and gas from the Section 32 leases since February 9, 2002, and (b) in physically removing the pipeline that connected the meter house to the main pipeline, damaging the Lavinia Pipeline, damaging the Oil Tank, causing the oil spill and causing the loss of approximately 100 barrels of oil.

6. Judgment as a matter of law shall therefore be entered in favor of the Reott Parties and against BBC declaring BBC liable for all damages related to, and arising from, the Reott Parties' claims of trespass, conversion and trespass to chattels. Damages will be determined at trial.

DATED this 24 day of May 2006.

BY THE COURT:

  
Judge Bryce K. Bryner  
Seventh Judicial District Court, Carbon County



*Approved as to form:*

\_\_\_\_\_  
Eric C. Olson  
Matthew K. Richards  
KIRTON & McCONKIE  
*Attorneys for Wasatch entities*

\_\_\_\_\_  
Carolyn McIntosh  
David E. Brody  
PATTON & BOGGS, LLP  
*Attorneys for BBC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3 day of April, 2006, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON WASATCH'S MOTION FOR SUMMARY JUDGMENT RE: REDEMPTION, AND, THE REOTT PARTIES' MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE, FRAUDULENT CONVEYANCE, TRESPASS, CONVERSION AND TRESPASS TO CHATTELS.**, to:

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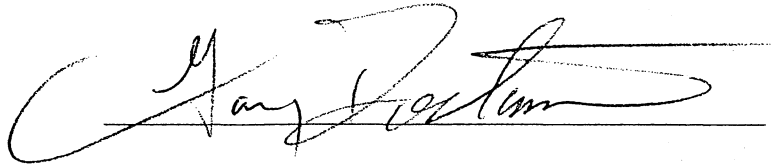
Eric C. Olson  
Matthew K. Richards  
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Nick Sampinos  
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*Attorneys for BBC*

A handwritten signature in black ink, appearing to read "Mary Johnston", is written over a horizontal line.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

METHOD	NAME
Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
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Mail	LAWRENCE E STEVENS ATTY 201 S Main Street, Suite 1800 PO Box 45898 Salt Lake City UT 84145
Mail	DIANNA M GIBSON ATTY 201 S Main Street, Suite

Case No: 010700991  
Date: May 24, 2006

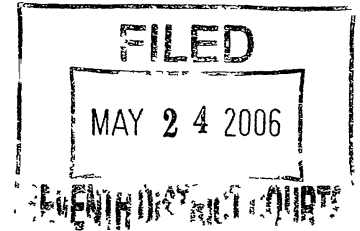
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1800  
PO Box 45898  
Salt Lake City UT 84145

Dated this 24<sup>th</sup> day of May, 20 06.

  
Deputy Court Clerk

Tab C



*Proposed and prepared by:*  
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*Attorneys for Edward A. Reott, Goal, L.L.C., and  
Regoal, Inc.*

---

**IN THE SEVENTH JUDICIAL DISTRICT COURT  
CARBON COUNTY, STATE OF UTAH**

---

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company,

Plaintiff,

vs.

EDWARD A. REOTT, an individual, KEY  
ENERGY SERVICES, INC., a Maryland  
corporation dba Key Energy Services, Inc. Four  
Corners Division, J-WEST OILFIELD  
SERVICE, INC., a Utah corporation, MISSION  
ENERGY, LLC, a Colorado limited liability  
company, and ALL OTHER UNKNOWN  
PERSONS OR PARTIES CLAIMING ANY  
RIGHT, TITLE, LIEN OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT HEREIN,

Defendants.

**STATEMENT OF MATERIAL  
UNDISPUTED FACTS SUPPORTING  
ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT**

**WASATCH'S MOTION FOR SUMMARY  
JUDGMENT RE: REDEMPTION,**

**AND,**

**THE REOTT PARTIES' MOTION FOR  
SUMMARY JUDGMENT ON QUIET  
TITLE, FRAUDULENT CONVEYANCE,  
TRESPASS, CONVERSION AND  
TRESPASS TO CHATTELS**

Case No. 010700991

Judge Bryce K. Bryner

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GOAL, L.L.C., a Utah limited liability company, as the real party in interest to the rights of Edward Reott, Key Energy Services Lien and J-West Oilfield Lien, and REGOAL, INC., a Pennsylvania corporation,

Counterclaim, Third Party and  
Crossclaim Plaintiffs,

vs.

WASATCH OIL & GAS, L.L.C., a Utah limited liability company, MISSION L.L.C., a Colorado limited liability company, WASATCH OIL & GAS PRODUCTION CORPORATION, a Utah corporation, WASATCH GAS GATHERING, a Utah limited liability company, BILL BARRETT CORPORATION, a Maryland corporation, and all other persons unknown claiming any right, title, estate or interest in or a lien upon the real property described herein adverse to the complainant's ownership or clouding his title thereto,

Third Party, Counterclaim and  
Crossclaim Defendants.

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The defendants Edward A. Reott, Goal, LLC, and Regoal, Inc. (collectively, the "Reott Parties"), through counsel and at the direction of the Court, submit the proposed Statement of Undisputed Material Facts, supporting this Court's December 16, 2005 Ruling and its Order granting Partial Summary Judgment on Wasatch Wasatch's Motion for Summary Judgment Re:



Redemption, and, the Reott Parties' Motion for Summary Judgment on Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels.

On April 15, 2004, Plaintiff Wasatch Oil and Gas, LLC ("Wasatch") filed a Motion for Summary Judgment. On April 30, 2004, the Reott Parties filed a Memorandum in Opposition in addition to its own Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels. Wasatch, Bill Barrett Corporation ("BBC") and the Reott Parties each filed opposing and reply memoranda. After full consideration of the briefs submitted by all parties, consideration of supplemental submissions, oral arguments held on January 24, 2005 and March 18, 2005, and post-hearing briefing submitted by all parties, the Court entered its Conclusions of Law on December 16, 2005. Pursuant to Rules 52(a), 56(c), and 56(d) of the Utah Rules of Civil Procedure, the Court states as follows:

#### STATEMENT OF MATERIAL UNDISPUTED FACTS

This court reviewed all of the material information contained in the record and submitted by Wasatch, BBC and the Reott Parties in conjunction with Wasatch's and the Reott Parties' Motions for Summary Judgment. For purposes of summary judgment, Wasatch specifically identified ten of the facts presented by the Reott Parties in their supporting memorandum to which there was a *material* dispute: 1, 30, 30b, 30c, 44, 55, 56, 72, 73, and 82.<sup>1</sup>

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<sup>1</sup> See Wasatch's Reply in Support of Motion for Partial Summary Judgment and In Opposition to Reott's Motion for Partial Summary Judgment Re: Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattel, at viii – ix and n.1, x - xi, The Wasatch parties asserted generally that some of the Reott Parties' facts "are mainly contentions regarding the legal meaning of the underlying documents—which of course, are not [facts] at all, but legal argument," (*see id.* at iii), Wasatch, however, contrary to the requirements in Rule 7(c)(3)(B), did not identify

With regard to the remaining facts, Wasatch took the position that there either was not a dispute or that the dispute was not material.<sup>2</sup> With regard to the issues relating to title and fraudulent conveyance, BBC joined and adopted the facts and arguments presented in Wasatch's briefs, and disputed just one of those facts – number 49.<sup>3</sup> With regard to the claims for trespass, conversion and trespass to chattels, BBC identified only eight facts as presented by the Reott Parties to which BBC claimed there was a "dispute." Those facts, as presented in the briefs, are numbered 83, 84, 85, 87, 90, 93, 96 and 97.<sup>4</sup> With regard to Wasatch's Statement of Undisputed Facts, Reott stated that it disputed or partially disputed fifteen of Wasatch's facts: 2, 9, 10, 11, 13, 15, 20, 22, 23, 24, 26, 27, 31, 39, and 57.<sup>5</sup>

This Court reviewed all the undisputed facts proposed by the parties and considered all objections to and identified disputes with those facts. The Court finds that the following material facts are not in dispute:

**STATEMENT OF UNDISPUTED MATERIAL FACTS**  
**REGARDING TITLE AND FRAUDULENT CONVEYANCE**

1. The following entities are referred to collectively herein as "Wasatch":

i. Third-party defendant Wasatch Oil & Gas Production Corporation ("WOGC"), a Utah corporation;

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which of the specific facts it disputed as "legal argument." As such, facts not disputed are deemed admitted.

<sup>2</sup> See *id.* at vii-viii, ix – x.

<sup>3</sup> See Bill Barrett Corporation's Memorandum in Opposition to Reott Parties' Motion for Partial Summary Judgment re: Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattel, at 5.

<sup>4</sup> See *id.* at 6-7.

<sup>5</sup> See Reott Parties' Memorandum in Opposition to Wasatch's Motion for Summary Judgment re: Redemption and Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion, and Trespass to Chattels Against Wasatch and BBC, at iv – xvi.

ii. Plaintiff and counterclaim defendant Wasatch Oil & Gas, L.L.C. (“Wasatch LLC”), a Utah limited liability company; and

iii. Third-party defendant Wasatch Gas Gathering, LLC (“Wasatch Gas”), a Utah limited liability company.

2. The following persons or entities are referred to collectively herein as the “Reott Parties:”

i. Defendant and counterclaim/third-party plaintiff Edward A. Reott (“Reott”), an individual residing in Carbon County, Utah;

ii. Third-party claimant Goal, LLC (“Goal”), a Utah limited liability; and

iii. Third-party claimant Regoal, Inc. (“Regoal”), a Pennsylvania corporation authorized and doing business in the State of Utah.

3. Third-party defendant Bill Barrett Corporation (“BBC”) is a Maryland corporation with its principal place of business in Denver, Colorado, authorized to do, and doing business in, the State of Utah.

4. Defendant Key Energy Services, Inc. (“Key Energy”) is a Maryland corporation authorized and doing business in the State of Utah as Key Energy Services, Inc. Four Corners Division.

5. Defendant J-West Oilfield Services, Inc. (“J West”) is a Utah corporation.

Mission Energy

6. From approximately 1997 to 2000, Mission Energy LLC ("Mission") was a Colorado LLC engaged in the oil and gas business on federal and state land in Carbon and Duchesne Counties. (*See Wasatch Fact No. 1: Undisputed.*)

7. During that time, Justin C. Sutton ("Sutton") was a manager of Mission. (*See Wasatch Fact No. 2: Undisputed.*)

Mission Owned Federal BLM Leases – Sections 27, 33 and 34

8. As of May 31, 1999, Mission was the record title owner in three Bureau of Land Management ("BLM") Mineral Leases Nos. U-08107, No. SL-069551 and No. SL-071595. (*See Wasatch Fact No. 3: Undisputed.*)

9. Lease No. U-08107 covered the south half of Section 27, Township 12 South, Range 16 East, SLB&M ("Section 27"). (*See Wasatch Fact No. 4: Undisputed.*)

10. Lease No. SL-069551 covered certain depths in Section 33, Township 12 South, Range 16 East, SLB&M ("Section 33"). (*See Wasatch Fact No. 5: Undisputed.*)

11. Lease No. SL-071595 covered depths below 3,460 feet in the south half of Section 34, Township 12 South, Range 16 East, SLB&M ("Section 34"). (*See Wasatch Fact No. 6: Undisputed.*)

Mission Owned State SITLA Leases – Section 32

12. As of April 16, 1997, Mission was the record title owner of two mineral leasehold interests, issued by the Utah School and Institutional Trust Lands Administration ("SITLA"), in Section 32—ML 43541 (560 acres) and ML 43798 (80 acres) ("Section 32

Leases”)—as reflected in the Carbon County Recorder’s abstract of the chain of title for Section 32. (*See Reott Fact No 2 Undisputed, Wasatch Fact No 7 Undisputed*)

13. ML 43541 (560 acres) and ML 43798 (80 acres) collectively covered the entire 640 acres of Section 32, Township 12 South, Range 16 East, SLB&M (“Section 32”) (*See Wasatch Fact No 8 and Reott Fact No 2 Undisputed*)

14. Mission Energy drilled the Lavinia State #1-32 well within the NW ¼ of the SE ¼ of Section 32 (the “Lavinia Well”). (*See Wasatch Fact No 9 Undisputed*)

15. Mission operated the Lavinia Well pursuant to ML 43541. (*See Wasatch Fact No 10 Undisputed*)

16. In 1997, Mission owned the following property in Section 32: (1) two mineral leases, identified as ML43798 (80 acres) and ML43541 (560 acres), which covered Section 32’s entire 640 acres, with rights from the surface to the center of the earth; and (2) the Lavinia Well, and all equipment, pipelines, improvements, production, and all other personal property. (*See Reott Fact No. 3: Undisputed.*)

*Reott Obtains a Judgment Against Mission*

17. On or about February 24, 1997, at the request of Mission, the Estate of Lavinia Reott, Ed Reott’s mother, made a bridge loan of \$160,000 to Mission, which loan was promised to be repaid in three months. (*See Reott Fact No. 4: Undisputed.*)

18. Mission did not repay the loan. (*See Reott Fact No. 5: Undisputed.*)

19. On May 15, 1998, Reott filed a lawsuit against Mission in Pennsylvania federal district court to recover the unpaid bridge loan. The case was removed to Colorado

federal district court in August 1998, and after trial on December 20, 1999, Reott obtained a judgment against Mission in the amount of \$204,000, plus costs and post-judgment interest of 5.67%. (*See Reott Fact No. 6: Undisputed.*)

*Various Other Creditors Assert Claims Against Mission*

20. From February 1998 through May 2000, eleven mechanics liens were recorded against Mission's interest in Section 32 because Mission had failed to pay for goods and services provided. (*See Reott Fact No. 7: Undisputed.*)

21. Key Energy Services, Inc. recorded its mechanics lien against Mission's interest in Section 32, on February 24, 1999 in the Carbon County Records office, identifying July 16, 1998 as the date of first work, and August 29, 1998 as the date of last work. (*See Reott Fact No. 8: Undisputed.*)

22. J-West Oilfield Service, Inc. recorded its Notice of Lien against Mission's interest in Sections 27, 32, 33 and 34, on August 12, 1999 in the Carbon County Records office, identifying January 1, 1998, as the date of first work and May 22, 1999, as the date of last work. (*See Reott Fact No. 9; Wasatch Fact No. 18: Undisputed.*)

*Transfer of Mission's BLM Leases to WOGC*

23. On June 1, 1999 and December 20, 1999, Mission executed "Transfer[s] of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources," in favor of Wasatch Oil & Gas, Corp. ("WOGC"), to convey its interests in Sections 27, 33 and 34 (among other interests), including Mineral Lease U-08107, No. SL-069551 and No. SL-071595. (*See Wasatch Fact No. 11, 12.*)

24. The BLM approved the June 1, 1999 transfer on September 1, 1999, and it approved the December 20, 1999 transfer on March 1, 2000. (*See Wasatch Fact No. 14: Undisputed.*)

Key Energy and J-West file foreclosure actions and record Lis Pendens against Mission Energy

25. On August 13, 1999, Key Energy recorded a *Lis Pendens* in the Carbon County Recorder's office, giving notice that Key Energy had filed a lawsuit against Mission to foreclose its mechanics lien against Mission. (*See Reott Fact No. 10: Undisputed.*)

26. On January 6, 2000, J-West filed a *Lis Pendens* in the Carbon County Recorder's office, giving notice that J-West had filed a lawsuit against Mission to foreclose its mechanics lien against Mission. (*See Reott Fact No. 11: Undisputed.*)

J-West obtains Judgment and Order of Foreclosure Against Mission

27. On May 22, 2000, J-West obtained a Default Judgment and Order of Foreclosure against Mission, in the amount of \$14,825.26, plus "after accruing legal fees and costs." (*See Reott Fact No. 12; Wasatch Fact No. 18: Undisputed.*)

Sutton Attempts to transfer Section 32 Leases; June 21, 2000 Letter Agreement

28. On June 21, 2000, Mission and WOGC executed a letter agreement (the "Letter Agreement") providing, among other things, for the transfer of Mission's mineral lease rights in Section 32 (ML 43541 and ML 43798), in addition to Mission's interests in other leases, to WOGC. (*See Reott Fact No. 66: Undisputed.*)

29. The following Leases were the subject of the June 21, 2000 Letter Agreement: The ten leases are identified as: UT65486, UT69463, UT60470, UT62890, UT66801, UT62645,

UT65782, UT65783, ML 43541, ML43798. Collectively, these leases are referred to hereafter as the “Jack Canyon Leases.” (*See Reott Fact No. 66a: Undisputed.*)

30. The Letter also states that “Mission will assign the [Jack Canyon Unit] operations to Wasatch,” and that “Mission will work in good faith to transfer to Wasatch any pending APDs on the Leases,” and that Mission will indemnify Wasatch. (*See Reott Fact No. 67: Undisputed.*)

31. The Letter Agreement stated that Mission will “assign to Wasatch all record title and working interest to all the Leases except for the well bore rights and attributable spacing unit relating to the [Lavinia Well],” in exchange for “a right to participate in a ‘trade’ relating to a drilling deal that Wasatch may be successful in putting together on the Leases.” In addition, Wasatch assumed the obligation to maintain the leases it received and agreed to reimburse Mission for \$3,629.00 in rental payments that Mission had made on four of the leases. (*See Reott Fact No. 68: Undisputed; Wasatch Reply at x, xii.*)

32. Under the Letter Agreement, Mission would retain the Lavinia Well, and the mineral lease rights to the forty-acre section of Section 32 where the Lavinia 1-32 Well sits (NW1/4, SE1/4), from the surface down to the depth of 3,398 feet. (*See Wasatch Fact No. 20: Undisputed.*)

*Sutton executes three Mineral Lease Assignment Forms for Section 32*

33. On June 23, 2000, Sutton executed three “Mineral Lease Assignment Forms” purporting to transfer to WOGC all of the “lessee / assignor’s” interest in Section 32, specifically the ML 43541 and ML 43798 leases, with the exception of the Lavinia Well and the forty-acre



section of the ML 43541 lease (located NW1/4, SE1/4), from the surface to a depth of 3,398 feet. (See *Wasatch Fact No. 21: Undisputed.*)

34. The three Mineral Lease Assignment Forms related to the *ML43541* and *ML43798* leases ("Mineral Lease Assignments"), are signed by Justin C. Sutton, and state that the "assignor's / lessee's" rights to the leases are assigned to WOGC. (See *Reott Fact No. 30: Undisputed; See Mineral Lease Assignments, attached at Appendix to Reott Parties' Motion for Summary Judgment, Exhibits 16, 17, 18.*)

35. The Mineral Lease Assignments identify Justin C. Sutton as the "assignor/lessee." Mission's name does not appear in the body of the assignment. (See *Reott Fact No. 30b: Undisputed; See Mineral Lease Assignments, attached at Appendix to Reott Parties' Motion for Summary Judgment, Exhibits 16, 17, 18.*)

36. Sutton did not, and has never held, any personal interest in the Section 32 Leases. (*Undisputed; See Wasatch/BBC Objection.*)

37. Sutton is not identified on the Mineral Lease Assignments as the manager of Mission or as a person authorized to execute the assignments on behalf of Mission. (See *Mineral Lease Assignments, attached at Appendix to Reott Parties' Motion for Summary Judgment, Exhibits 16, 17, 18.*)

38. In addition, the Mineral Lease Assignment Forms are improperly notarized, reflecting that Heather Holdorf—and not Justin C. Sutton—executed the documents. (See *Reott Fact No. 30d: Undisputed.*)

39. On the backside of the Mineral Lease Assignments, WOGC hand writes that it accepts the transfer of the Section 32 Leases from Mission. (*See Mineral Lease Assignments, attached at Appendix to Reott Parties' Motion for Summary Judgment, Exhibits 16, 17, 18.*)

40. The Mineral Lease Assignment Forms (nor any other conveyance document) for the Section 32 Leases were not recorded with the Carbon County Recorder. (*See Reott Fact No. 31: Undisputed.*)

*The ML43541 Lease, in Section 32, is carved up to excise the Lavinia Well*

41. The Mineral Lease Assignment Forms carve up the *ML 43541* lease, and appear to convey to WOGC, all of the leasehold interests in Section 32, with the exception of a carved out 40-acre section of the *ML 43541* lease, upon which the Lavinia 1-32 well is located, with rights limited to a depth of 3,398 feet, which was retained by Mission. (*See Reott Fact No. 32: Undisputed.*)

42. Todd Cusick, WOGC's President, testified during WOGC's 30(b)(6) deposition as follows:

Q. Tell me each reason why the Lavinia Well was carved out of the June letter, June 2000 Letter agreement.

A. Somewhere along there, as I told you before, I don't know exactly where to place it, but by virtue of our business with J-West and Key Energy, you know, it became apparent that there were some monies owed there and we didn't want anything to do with that. And so that part was just carved out so that we could stay away from issues between Mission and J-West and Key Energy, or filleted out.

(*See Reott Fact No. 34: Undisputed.*)

43. WOGC knew about Mission's debts to Key Energy and J-West. (*See Reott Fact No. 35: Undisputed.*)

44. The Key Energy and J-West mechanics liens and lis pendens were recorded in the Carbon County Recorder's office, against Mission's interest in Section 32, prior to the June 21, 2000 attempt to transfer the Section 32 Leases to WOGC. (*See Reott Fact No. 36: Undisputed.*)

45. The J-West Judgment had been entered on May 22, 2000, by this Court, and automatically became a lien against *all* of Mission's real property owned as of May 22, 2000, including all of its interest in Section 32, before WOGC acquired any interest through the June 23, 2000 Mineral Lease Assignment Forms. (*See Reott Fact No. 37: Undisputed.*)

46. WOGC decided, on its own, that the Key Energy mechanics lien, the J-West mechanics lien and the J-West judgment only attached to the Lavinia Well. (*See Reott Fact No. 38: Undisputed.*)

47. WOGC and Mission decided to "carve or fillet out that well and the 40 acres that goes with it and move it aside." (*See Reott Fact No. 39: Undisputed.*)

48. WOGC was not interested in the Lavinia well, and believed that it was "more of a liability than it was of any value." (*See Reott Fact No. 40: Undisputed.*)

After June 23, 2000, Mission Retains Only the Lavinia 1-32 Well

49. After June 23, 2000, Mission retained only the Lavinia 1-32 well, and a limited 40-acre section of the *ML 43541* lease, with rights limited to a depth of 3398 feet. (*See Reott Fact No. 41: Undisputed.*)

50. WOGC knew that, if the June 2000 transaction was completed, Mission was without any assets, with the exception of the Lavinia Well. (See *Reott Fact No. 75: Undisputed.*)

WOGC and Wasatch Do Not Obtain Drilling Deal as promised for the June 2000 Transfers

51. WOGC/Wasatch did not put together a drilling deal. (See *Reott Fact No. 70: Undisputed.*)

52. WOGC/Wasatch testified that it had no obligation to obtain a drilling deal. (See *Reott Fact No. 71: Undisputed.*)

53. Mr. Cusick, as the 30(b)(6) deponent for WOGC/Wasatch, testified:

Q: . . . What did you do to determine the value of the property you received from Mission with respect to the June 2000 letter agreement?

A: . . . [W]e negotiated what we thought the value was and the value came out to be—or what they wanted was what we call a back-in, meaning that if we were able to go out there and get somebody to take those leases and drill wells on those leases and carry us for our percentage of that drilling arrangement, that Mission could back into a specific percentage of what we were given. . . . I asked them what they wanted and what he wanted was the chance to participate in a drilling arrangement. That's what they were trying to accomplish, and that's what we gave them.

Q: And do you know what value you placed on the property, just the contract value that's mentioned in the . . . June 11th letter?

A: The trade there is their right to participate in a drilling deal that was cut. . . . We did not place a dollar value on the acreage in that. We simply traded the operating rights in those agreements for giving them a piece of a drilling deal that we were able to obtain, and that's what they wanted. They wanted to do it that way. They didn't—we—and so that's what we gave them.

Q: And were you ever able to obtain a drilling deal?

A: No. Well, rather than doing a drilling deal we sold it all. . .

Q: So did you give Mission any consideration back for its interest in your prospective drilling deal?

A: Why would we do that?

Q: They got nothing for that part of the contract?

A: They got the right to participate in a drilling deal that never happened. . . .

Q: And you didn't provide Mission any consideration for that failure as a result of the Bill Barrett transaction?

A: The deal is self-explanatory. You can see there was no consideration for that event if we were to sell it all. What they wanted was the right to participate in a drilling deal if it happened, and it didn't happen and so that's what they got. They got what they asked for.

*(See Todd Cusick Depo cited in Reott Facts No. 70 and 71: Undisputed.)*

WOGC Requests ML 43541 be Partitioned to ML 43541 and ML43541-A

54. On or about September 15, 2000, SITLA granted WOGC's request to partition the *ML 43541* lease into two sections; a 520 acre section and a forty-acre section. The 520 acre section is now identified as *ML43541-A*. *(See Reott Fact No. 42: Undisputed.)*

55. The forty-acre section upon which the Lavinia Well is located remains identified as the *ML 43541* lease. *(See Reott Fact No. 43: Undisputed.)*

56. After September 21, 2000, Section 32 now contains mineral leases, currently identified as *ML43798* (80 acres, w/rights from surface to center of the earth), *ML43541-A* (520 acres, w/rights from surface to center of the earth), and *ML43541* (40 acres, w/rights from

surface to center of the earth); and (2) the Lavinia Well, and all equipment, pipelines, improvements, production, and all other personal property located on the same 40 acre section as lease ML43541. (*See Reott Fact No. 43: Undisputed.*)

Reott Domesticates the Colorado Judgment Against Mission in Carbon County

57. On October 27, 2000, defendant Edward A. Reott domesticated in this Court, the Colorado Judgment against Mission. (“Reott Domesticated Judgment”). (*See Reott Fact No. 13: Undisputed.*)

WOGC transfers the Section 32 Leases to Wasatch; Wasatch records a wild deed

58. The Carbon County Recorder’s office shows that on November 27, 2000, a Bill of Sale and Assignment between WOGC and Wasatch LLC is recorded. (*See Reott Fact No. 14: Undisputed.*)

59. The Bill of Sale and Assignment, and the related WOGC Asset Purchase Agreement, purports to transfer WOGC’s interest in the Section 32 Leases to Wasatch. The documents were executed on October 27, 2000, but they state that they are effective as of July 1, 2000 – just nine days after Sutton executed the Mineral Lease Assignment Forms related to the Section 32 Leases. (*See Reott Fact No. 15: Undisputed.*)

60. As of November 27, 2000, the Carbon County Recorder’s abstract of Section 32 does not show any transfer of Mission’s property interest in Section 32 to WOGC, and it does not show any transfer of such interests to WOGC. (*See Reott Fact No. 16: Undisputed.*)

Key Energy obtains Judgment and Order of Foreclosure Against Mission

61. On December 13, 2000, Key Energy obtained an Order Granting Motion for Summary Judgment and Decree Foreclosing Oil & Gas Lien, entering judgment against Mission in the amount of \$33,159.82, plus interest at a rate of 24%, plus post-judgment attorney fees and costs. (*See Reott Fact No. 18; Wasatch Fact No. 19: Undisputed.*)

J-West and Key Energy Assign Interest in Judgments and Liens to Reott

62. On January 19, 2001, J-West assigned its interest in its judgment and lien to Reott. Reott paid J-West \$15,000 for the assignment. (*See Reott Fact No. 19: Undisputed.*)

63. Reott recorded the assignment from J-West on January 29, 2001, in the Carbon County Recorder's office. (*See Reott Fact No. 20; Wasatch Fact No. 29: Undisputed.*)

64. On April 27, 2001, Key Energy assigned its interest in its judgment and lien against Mission to Reott. Reott paid Key Energy \$14,000 for the assignment. (*See Reott Fact No. 21; Wasatch Fact No. 30: Undisputed.*)

65. Reott recorded the assignment from Key Energy on May 4, 2001, in the Carbon County Recorder's office. (*See Reott Fact No. 22: Undisputed.*)

The August 9, 2001 Sheriff's Sale

66. On May 16, 2001, Reott through his former counsel filed with this Court three separate pleadings styled "Motion for Writs of Execution" seeking enforcement of (1) the Key Energy Default Judgment, (2) the J-West Default Judgment, and (3) the Reott Colorado Judgment against Mission's interest in Sections 27, 32, 33 and 34, and served the Sheriff of

Carbon County with a Praeipie for each of these judgment interests. (*See Wasatch Fact No. 32; Reott Fact No. 23 and 24: Undisputed.*)

67. The Sheriff's sale was held on August 9, 2001. (*See Reott Fact No. 25; Wasatch Fact No. 33: Undisputed.*)

68. No other bidders appeared, so Reott credit bid \$1.00, and received a Sheriff's Certificate of Sale for all of Mission's interests in Sections 27, 32, 33 and 34. (*See Reott Fact No. 26; Wasatch Fact No. 34: Undisputed.*)

69. Deputy Craig thereafter issued a Sheriff's Certificate of Sale verifying that he had sold to Reott for the sum of \$1.00, as the "highest bid made," the following property: (*See Wasatch Fact No. 35: Undisputed.*)

Township 12 South Range 16 East; Sections 27, 32, 33 and 34 in Carbon County Utah together with oil and gas lease (Utah State Mineral Lease No.. ML-43541), the oil and gas well located thereon referred to as Lavinia State L# 1-32 [sic], and all productions, improvements, equipments and pipelines on or appurtenant to the well.

70. The Sheriff's Certificate of Sale was recorded on August 9, 2001, reflecting a transfer of Mission's interest in Sections 27, 32, 33 and 34 to Edward A. Reott. (*See Reott Fact No. 27: Undisputed.*)

*Wasatch Files Notice of Redemption & Quiet Title Action*

71. On December 24, 2001, Wasatch Oil & Gas, LLC, filed a Notice of Exercise of Right of Redemption ("Redemption Notice"). That same day, Wasatch filed a complaint to quiet title ("Quiet Title Action"). (*See Reott Fact No. 28; Wasatch Fact No. 36: Undisputed.*)



72. The Wasatch Redemption Notice consisted of eleven pages and eighteen exhibits. (*See Wasatch Fact No. 37: Undisputed.*)

73. Attached to Wasatch's Redemption Notice are the three Mineral Lease Assignment Forms related to the Section 32 Leases, *ML43541* and *ML43798* ("Mineral Lease Assignments"), signed by *Justin C. Sutton*. (*See Reott Fact No. 30: Undisputed.*)

74. The Wasatch Redemption Notice provides:

(C) Unredeemed Interests.

Wasatch does not redeem and asserts no right or redemption, and disclaims any right, title or interest in or to that portion of the Sale Properties described as follows:

(a) A portion of Utah State Mineral Lease No. ML-43541, covering the Green-Mesa Strata of the NW¼ of the SE¼ of Section 32, Township 12 South, Range 16 East, SLB&M, Carbon County, Utah (i.e., the site of the Lavinia 1-32 Well);

(b) The improvements, equipment, pipelines, wells and other personal property situated on or appurtenant to the Lavinia 1-32 Well or located on the NW¼ of the SE¼ of said Section 32

(*See Wasatch Fact No. 40 and Redemption Notice: Undisputed.*)

75. Wasatch does not redeem nor claim an interest in the Lavinia Well, the upper portion of the ML 43541 lease—which covers the 40-acres upon which the Lavinia Well sits, from the surface to a depth of 3,398 feet—or the equipment, improvements, pipelines, or production within the 40-acre section. (*See Reott Fact No. 33: Undisputed.*)

76. The Wasatch Redemption Notice was served by certified mail on the Clerk of the Court, the County Recorder and the County Sheriff and was served by mail on then-counsel for Reott. (*See Wasatch Fact No. 38: Undisputed.*)

Sheriff's Office's Response to Wasatch's Notice of Redemption

77. On January 10, 2002, Deputy Craig of the Carbon County Sheriff's office sent a letter to Wasatch (a) certifying receipt of the Wasatch Redemption Notice on December 26, 2001, and (b) stating that, "after due and diligent search and inquiry I. am unable to find MISSION ENERGY within Carbon County, State of Utah. EDWARD A. REOTT, KEY ENERGY SERVICES AND J-WEST OILFIELD SERVICES ARE NOT LOCATED IN CARBON COUNTY, UTAH." (*See Wasatch Fact No. 49: Undisputed.*)

78. The Carbon County Sheriff's office returned to Wasatch check #686507335 for \$1.06. (*See Wasatch Fact No. 51: Undisputed.*)

Wasatch's Second Redemption Notice

79. On January 18, 2002, filed a second Notice of Redemption and Tender of Redemption Amount in the Key Energy case, the J-West case, and the Reott Judgment case (the "Second Wasatch Redemption Notice"). (*See Wasatch Fact No. 52: Undisputed.*)

80. The Second Wasatch Redemption Notice was served on the same persons who were served with the First Redemption Notice: the Clerk of this Court, the County Recorder, the County Sheriff's Office and then-counsel for Reott. (*See Wasatch Fact No. 53: Undisputed.*)

81. At the same time, on January 18, 2002, Wasatch filed with this Court a "Notice of Filing Notice of Redemption and Tender of Redemption Amount" (the "Wasatch Notice of Filing") in order to give further, formal notice that it had filed the Second Wasatch Redemption Notice. (*See Wasatch Fact No. 54: Undisputed.*)

Reott Obtains Sheriff's Deed and Transfers Interests to Regoal

82. On or about February 9, 2002, Reott obtains a Sheriff's Deed to the property. That same day, Reott transferred whatever rights he acquired at the Sheriff's Sale, as evidenced by the Certificate of Sale, to Regoal, Inc. ("Regoal"), a company he controls. (*See Reott Fact 47; Wasatch Fact No. 56: Undisputed.*)

83. The Carbon County Sheriff's Office did not issue a redemption certificate to Wasatch. (*See Reott Fact 46: Undisputed.*)

84. On March 11, 2002, the Reott Parties recorded the Sheriff's Deed in the Carbon County Recorder's Office. (*See Reott Fact No. 47: Undisputed.*)

85. The Carbon County Abstract for Section 32 shows no recorded conveyance from Mission to anyone, not to mention WOGC, until February 9, 2001, when the Reott Parties acquired the Sheriff's Deed. (*See Reott Fact No. 51: Undisputed.*)

Reott's Objection to Redemption

86. The tender was rejected by Reott. (*Undisputed; See Wasatch/BBC Objection.*)

87. In response to Wasatch's Notice of Redemption, the Reott Parties filed a "Notice that Wasatch is Not a Proper Party to Redeem or That the Amount of Redemption Is Insufficient." (*See Reott Fact No. 29: Undisputed.*)

Reott files and records Motion to Prohibit Transfer of Property

88. In response to Wasatch's Redemption Notice, Reott filed a Motion to Prohibit the Transfer of Property. (*See Motion to Prohibit Transfer of Property Pursuant to Rule 69(Q) and 69(S), Case Nos. 000700003, 006700886, 990700565.*) And, on February 8, 2002, Reott

recorded with the Carbon County Recorder's office, a "Notice of Motion Pending Pursuant to Rule 69(Q) and 69(S), Utah Rules of Civil Procedure." (*See Reott Fact No. 45: Undisputed.*)

*Reott records Lis Pendens, giving notice of the pending lawsuit*

89. On April 18, 2002, Reott filed a *lis pendens* in the Carbon County Recorder's office, giving notice of Reott's current quiet title action in Sections 27, 32, 33 and 34. (*See Reott Fact No. 48: Undisputed.*)

*Wasatch Sells Section 32, and Other Former Mission Property, to Bill Barrett Corporation*

90. On May 17, 2002, Bill Barrett Corporation ("BBC") recorded an Assignment and Bill of Sale, reflecting that Wasatch sold to BBC all of the property it had acquired from Mission, including the Section 32 Leases. The Bill of Sale was executed on or about April 15, 2002, and noted an "effective date" of April 1, 2002. (*See Reott Fact No. 49: Undisputed by Wasatch; BBC dispute taken into account.*)

91. As reflected in the plain language of the Purchase and Sale Agreement, BBC and Wasatch had knowledge—prior to the sale to BBC—of the J-West mechanics lien and judgment, the Key Energy mechanics lien and judgment, and the Reott Domesticated Judgment, and BBC knew about the pending quiet title action filed by Wasatch, and the claims and defenses asserted by the Reott Parties. (*See Reott Fact No. 50: Undisputed.*)

92. Through a Purchase and Sale Agreement dated April 30, 2002, BBC acquired all of Wasatch's right, title and interest in and to Sections 27, 32, 33 and 34. (*Undisputed; See Wasatch/BBC Objection.*)

93. As Wasatch's successor, BBC acquired only whatever rights Wasatch had in Sections 27, 32, 33 and 34. (*Undisputed; See Wasatch/BBC Objection.*)

**Additional Findings of Material Undisputed Facts Concerning Fraudulent Transfer**

94. Mission's accountant Bruce Hill testified that Mission was undercapitalized, that its financial condition was marginal in 1998, that it did not have the money to pay the Reott Colorado Judgment obtained in December 1999, and that he would have advised Mission's creditors not to bother attempting to collect debts in December 1999. (*See Reott Fact No. 59: Undisputed.*)

95. At the time the Reott Bridge Loan was made, in February 1997, Mission had no ability to repay the loan within the time promised. (*See Reott Fact No. 60: Undisputed.*)

96. Mission was not paying its debts as they came due, as evidenced by

- a. the Key Energy Lien (2/1999), Lis Pendens (8/1999), and Judgment (12/2000),
- b. the J-West Lien (8/1999), Lis Pendens (1/2000) and Default Judgment (5/2000),
- c. the Reott Colorado Judgment (12/1999), domesticated in Carbon County on 10/26/2000), and
- d. the nine other mechanics liens recorded in the Carbon County Recorder's office, against Mission's interest in Section 32, Township 12S, Range 16E, in Carbon County from February 20, 1998 to April 20, 2000. (*See Reott Fact No. 61: Undisputed.*)

97. Mission's June 1999 and December 1999 accounts payable ledger reflects that Mission was not paying its debts as they came due, and that several debts were more than one year past due. (*See Reott Fact No. 62: Undisputed.*)

98. Mission's balance sheets show that its liabilities exceeded its assets. (*See Reott Fact No. 63: Undisputed.*)

99. Effective June 1, 1999 (executed June 30, 1999, recorded July 17, 1999), Mission conveyed to Wasatch all of its interests in 18 leases and 11 wells, located in Carbon and Duchesne Counties, including all of its interest in several leases and a pipeline located on Sections 27, 33 and 34 in Carbon County. (*See Reott Fact No. 64: Undisputed.*)

100. On May 1, 2000, by letter, Mission agreed to transfer to Wasatch Oil & Gas Corporation all of its interest in approximately 16 leases ("May 2000 Letter"). (*See Reott Fact No. 65: Undisputed.*)

101. On June 21, 2000, Mission, by letter, states that "Mission will assign to Wasatch all record title and working interest to all the Leases except for the wellbore rights and attributable spacing unit relating to the Lavinia #1-32 well." ("June 2000 Letter Agreement") The "Leases" include Mission's interest in ten leases, including the leases covering Section 32—ML43541, ML43798, and any pending APDs on the Leases. (*See Reott Fact No. 66, 67: Undisputed.*)

102. The June 2000 Letter was never recorded. (*See Reott Fact No. 69: Undisputed.*)

103. The Mineral Lease Assignment forms for the Section 32 Leases—*ML43541* and *ML43798*—were not recorded with the Carbon County Recorder’s Office at the time of the alleged transfer, were not recorded at the time of the Sheriff’s sale, were not recorded at the time Wasatch filed its Redemption Notice, and were not recorded when Wasatch sold its interests to BBC. In fact, the Mineral Lease Assignments were not recorded until March 17, 2003. (*See Reott Fact No. 76: Undisputed.*)

104. On August 22, 2000, Mission sent a letter to Todd Cusick of WOGC stating:

There are several creditors with outstanding issues. . . . specifically Ed Reott . . . I must advise your offices to refer any similar creditor, or legal calls directly to my attention. Further given the confidentiality of the agreements entered into between our companies, I would request that no verbal, or written information be sent to anyone without prior written permission from Mission Energy.

(*See Reott Fact No. 77: Undisputed.*)

105. That same day, August 22, 2000, Justin C. Sutton of Mission wrote to Ed Reott, representing, among other things:

. . . the managers of Mission Energy are doing everything possible to protect the assets of the company. We are working with several companies to develop a drilling program in hopes of receiving revenues to pay off creditors of the company. In that regard, many of those creditors who are owed monies for operations and permitting that have not been paid are working with Mission to try and make the company successful.

(*See Reott Fact No. 78: Undisputed.*)

106. On December 26, 2000, Justin C. Sutton, on behalf of Mission, sent a letter to J-West’s counsel Clark Allred, stating that Mission will satisfy the judgment, and requesting that

J-West recognize Mission's rights. The letter contains no mention that Mission had transferred assets—not to mention its interests in Section 32, 33, 34 and the S/2 of 27, to WOGC. (*See Reott Fact No. 79: Undisputed.*)

107. By letter dated October 23, 2000, Justin C. Sutton represented to Mr. Reott's attorney, federal judges, magistrates and court clerks, that effective October 1, 2000, Justin C. Sutton had resigned as Manager of Mission, and that future correspondence should be sent to "legal counsel at 531 Encinitas Blvd. #200, Encinitas, California, 92024." (*See Reott Fact No. 80: Undisputed.*)

108. The address Sutton provided was not the address of "legal counsel," as represented, but the California address for Intermarket Trading. (*See Reott Fact No. 81: Undisputed.*)

109. Mission was organized as a Colorado limited liability company. (*See Wasatch Fact No. 1: Undisputed.*)

110. Mission's Operating Agreement identifies four initial managers—Fred G. Jager, Mr. Sutton, William F. Muller, and Charles B. Willard. (*See Reott Fact No. 56, and Wasatch's Response to Fact No. 56; See Reott Reply Brief at vi and Operating Agreement in Reott Appendix, Exhibit 8 – Undisputed.*)

111. The Operating Agreement expressly states that there must be four managers at all times, and that a majority (i.e., three) of these managers must agree to and approve of all major company decisions, including the disposition of corporate assets. (*See Operating Agreement in Reott Appendix, Exhibit 8.*)



112. The Operating Agreement expressly requires the signature of two managers to dispose of company property. (*See Reott Fact No. 57—undisputed; Operating Agreement in Reott Appendix, Exhibit 8*)

113. Mr. Sutton was the only signatory on the documentation surrounding the purported June 1999, May 2000 and June 2000 Transfers to WOGC. (*Undisputed – see Transfer Documents.*)

114. The documents Mission executed to transfer the BLM leases covering Sections 27, 33 and 34 and the SITLA leases covering Section 32 to WOGC reflect only one signature from a representative of Mission. (*Undisputed – see transfer documents attached to Wasatch's Notice of Redemption; see Reott Appendix, Exhibits 16, 17, 18.*)

115. At the time of these three transfers, Mr. Sutton was the only manager of Mission. (*See Wasatch Reply Memo at vi, x; see also Wasatch/BBC Objection at 8.*)

**STATEMENT OF MATERIAL UNDISPUTED FACTS REGARDING TRESPASS,  
TRESPASS TO CHATTELS AND CONVERSION**

**BBC Drilled Two Wells on Section 32 and Has Reported Production since December 2003**

116. BBC has drilled two new wells on Section 32, on either side of the Lavinia Well. These wells are connected to the gathering system, and BBC began reporting production from those wells in December 2003. (*See Reott Fact 98, 99 – undisputed; BBC hearing statement confirming production.*)

BBC Forcibly Removes the Lavinia Pipeline, Damages the Oil Tank, Causes an Oil Spill and Refuses to Replace the Pipeline and to Pay Any Damages.

117. On or about October 30, 2003, BBC's "pipe crew" inadvertently removed, with force, the pipeline ("Lavinia Pipeline") that provided the physical connection between the Lavinia Well and the gas gathering system. (See *Reott Fact 83, as modified by BBC's identified dispute; See Reott Reply Brief at xiv.*)

118. The next day, on November 1, 2003, Mr. Reott observed the damage caused by BBC's pipe crew. Mr. Reott observed that, when the pipeline was ripped out, the meter house for the Lavinia Well ("Lavinia Meter house") was pulled off its foundation into a pine tree. The gas line running from the meter house to the well head ("Gas Production Line") had been bent on to the oil production line ("Oil Production Line"), and had ruptured at a 90 degree connection. (See *Reott Fact 84; BBC Response No. 84— undisputed; See Reott Reply Brief at xv.*)

119. The Lavinia Well was shut down, the heater in the oil tank ("Oil Tank") was turned off, and the oil in the tank had turned solid. (See *Reott Fact 85; BBC Response No. 85 — undisputed; See Reott Reply Brief at xvi.*)

120. BBC's Jeff Addley apologized to Reott for the damage caused by BBC's pipe crew, and stated that BBC would "fix it and take care of it." (See *Reott Fact 86 — undisputed.*)

121. On or about November 15, 2003, BBC repaired the Lavinia Meter house and the ruptured Gas Production Line. (See *Reott Fact 87, as modified by BBC Response to 87 — no dispute; See Reott Reply Brief at xvii.*)

122. On November 15, 2003, BBC's senior landman, Mr. Tab McGinley visited the Lavinia Well site to confirm that BBC had repaired the Lavinia Meter house. He observed the Oil Tank shaking, due to the co-production of oil and gas into the same tank. (*See BBC Response to Reott Fact 90 – no dispute; See Reott Reply Brief at xvii-xviii.*)

123. That same day, Reott turned the heater back on and began reheating the oil in the Oil Tank. (*See Reott Fact 88 -- undisputed.*)

124. On or about December 1, 2003, the next time Reott returned to the Lavinia Well, after the Oil Tank was heated, approximately 90 barrels of oil leaked from the Oil Tank and had filled the protective berm surrounding the tank. This resulted in the Lavinia Well again being shut down. (*See Reott Fact 89 -- undisputed.*)

125. Reott—as the property owner—inspected the Oil Tank. Reott determined that the force used by BBC in removing the Lavinia Pipeline from the connection to the Lavinia Meter house bent the Gas Production Line approximately 18” into the Oil Production Line, damaging the connection to the Oil Tank. (*See Reott Fact 90 and BBC's claimed dispute; See Reott Reply Brief at xvii-xviii.*)

126. Reott contacted Mr. Addley of BBC to report the spill and asked BBC to repair and cleanup the damage. (*See Reott Fact 91--undisputed.*)

127. BBC has refused to replace or pay the cost to replace the Lavinia Pipeline. (*See Reott Fact 97; BBC Response 97 —undisputed; See Reott Reply Brief at xx-xxi.*)

128. BBC refused to repair the damage to the Oil Tank, refused to clean up the oil spill, and refused to compensate the Reott Parties for lost oil production and the lost sale of

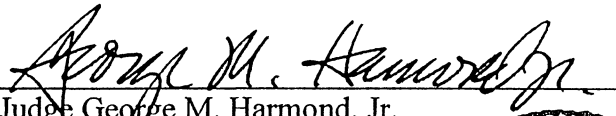
approximately 100 barrels of oil. (See *Reott Fact* 97; *BBC's Response* 97 – undisputed; See *Reott Reply Brief* at xx-xxi.)

### CONCLUSIONS OF LAW

Relying on the above statement of undisputed material facts, the Court made its December 16, 2005 Ruling on (1) Wasatch's Motion for Partial Summary Judgment re: Redemption Issues and (2) Reott's Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion, and Trespass to Chattels.

DATED this 24 day of May 2006.

BY THE COURT:

  
Judge George M. Harmond, Jr.  
Seventh Judicial District Court, Carbon County



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **STATEMENT OF MATERIAL UNDISPUTED FACTS SUPPORTING ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON WASATCH'S MOTION FOR SUMMARY JUDGMENT RE: REDEMPTION, AND, THE REOTT PARTIES' MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE, FRAUDULENT CONVEYANCE, TRESPASS, CONVERSION AND TRESPASS TO CHATTELS**, to:

Eric C. Olson  
Matthew K. Richards  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
P.O. BOX 45120  
Salt Lake City, Utah 84145-0120  
*Attorneys for Wasatch*

Carolyn McIntosh  
David E. Brody  
PATTON & BOGGS, LLP  
1600 Lincoln Street, Suite 1900  
Denver, Colorado 80264

Nick Sampinos  
190 North Carbon Avenue  
Price, Utah 84501

*Attorneys for BBC*

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

METHOD	NAME
Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
Mail	ERIC C OLSON ATTORNEY PLA POB 45120 SALT LAKE CITY UT 84145-0120
Mail	NICK J SAMPINOS ATTORNEY 190 N CARBON AVE PRICE UT 84501
Mail	CAROLYN MCINTOSH ATTY 1600 Lincoln Street, Suite 190 Denver CO 80264
Mail	DAVID E BRODY ATTY 1600 Lincoln Street Suite 1900 Denver CO 80264
Mail	MATTHEW K RICHARDS ATTY 1800 Eagle Gate Tower PO Box 45120 Salt Lake City UT 84145
Mail	LAWRENCE E STEVENS ATTY 201 S Main Street, Suite 1800 PO Box 45898 Salt Lake City UT 84145
Mail	DIANNA M GIBSON ATTY 201 S Main Street, Suite

Case No: 010700991  
Date: May 24, 2006

---

1800  
PO Box 45898  
Salt Lake City UT 84145

Dated this 24<sup>th</sup> day of May, 2006.

  
\_\_\_\_\_  
Deputy Court Clerk

Tab D



MINERAL LEASE NO. ML-43541

RECORD TITLE ASSIGNMENTS:

☒ TOTAL  
☐ INTEREST  
☐ PARTIAL  
☐ OVERRIDING ROYALTY  
 OPERATING RIGHTS ASSN. ☐

RECEIVED

MAR 17 1997

The undersigned, as owner of interest as hereinafter specified in and to ML 43541 as designated, for good and valuable consideration and Ten and more DOLLARS does hereby apply for approval of this assignment and hereby assigns to Mission Energy, LLC

ADDRESS: 1617 Lincolnwood Drive, Glenwood Springs, CO 81601

the rights, title, and interest in rights and privileges as lessee in such lands, to the extent indicated subject to the reservation of overriding royalties as herein noted:

1. Land affected by this assignment in County of Carbon, State of Utah, as described herein:

Township 12 South - Range 16 East, SLMSection 32: S $\frac{1}{2}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ 560.00 ACRES

- |  |              |
|--|--------------|
| 2. Interest of assignor in such lands (Note % of 100%)                       | <u>100%</u>  |
| 3. Extent of such interest conveyed to Assignee (Note % of 100%)             | <u>100%</u>  |
| 4. Extent of interest retained by Assignor after assignment (Note % of 100%) | <u>-0-</u>   |
| 5. Overriding royalty reserved herein to Assignor (Note percentage only)     | <u>2.00%</u> |
| 6. Overriding royalty previously reserved (Note percentage only)             | <u>2.00%</u> |

It is hereby certified that the statements made herein are true, complete, and correct to the best of the undersigned's knowledge and belief and are made in good faith. Approval of this application and assignment should be considered approval only under such rights, interests, and title as held by assignor.

Executed this 3rd day of MARCH, 19 97



(Lessee - Assignor)

Kevin Williams, Manager

## LESSEE-ASSIGNOR'S ACKNOWLEDGEMENT

STATE OF TEXAS )

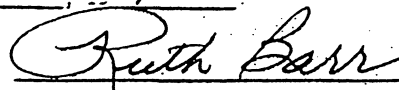
:SS

COUNTY OF TRAVIS )

On the 3rd day of March, 19 97, personally appeared before me  
Kevin Williams, signer(s) of the above instrument, who duly acknowledged to me that  
he executed the same.

Given under my hand and seal this 3rd day of March, 19 97

My Commission Expires: 6/30/2000


NOTARY PUBLIC, residing at: Austin, TX

ASSIGNMENT APPROVED

...must be submitted in duplicate. Total Assignment—\$30, Interest, Operating Rights, and—  
Surrendering Royalty Assignments—\$30, and Partial Assignment—\$50.

INDIVIDUAL'S ACCEPTANCE OF ASSIGNMENT (ASSIGNEE)  
AFFIDAVIT OF CITIZENSHIP OF ASSIGNEE

(we) \_\_\_\_\_ on oath, do solemnly swear that I am (we are) at the  
present time (a) \_\_\_\_\_ Citizen(s) of the United States of America and of legal age, and I (we) hereby  
come and agree to perform all of the covenants and obligations of said lease on the part of lessee(s) to be kept and  
formed, and accept the foregoing instrument.

BY: \_\_\_\_\_

scribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, residing at:

ACCEPTANCE OF ASSIGNMENT—CORPORATE (Assignee)

is now Mission Energy, LLC, a corporation of Colorado and hereby accepts the assignment  
White River Energy, LLC of Lease ML No. 43501, which  
assignment is dated March 3, 1997, subject to all of the covenants and obligations of said Lessee.

WITNESS WHEREOF, W.F. Muller has executed this acceptance this 4th day of March, 1997.

(Assignee)

BY:

W.F. Muller  
Manager  
(Officer, Agent, Attorney-in-Fact)

ASSIGNEES ACKNOWLEDGEMENT (Corporate)

STATE OF COLORADO  
County of Denver

On the 4th day of March, 1997, personally appeared before me W.F. Muller,  
acting by me duly sworn did say, each for himself, that (he, she, or they) is an officer, agent or Attorney-in-Fact  
assignee and is authorized to accept this assignment and has executed the same and the seal affixed is the seal of  
corporation.

Commission Expires: 01-24-01

Madonna M. Wyman  
NOTARY PUBLIC, residing at:

MADONNA M. WYMAN  
NOTARY PUBLIC  
STATE OF COLORADO

Commission Expires Jan. 24, 2001

a\* Insert here whether native born or naturalized. If naturalized, it will be necessary to file with this office Proof  
of Citizenship or Declaration of Intention to become a citizen in the form of a letter of certificate of verification from  
the State Department, and registration fee of \$1.00.

Tab E



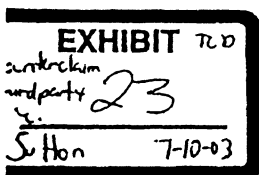
Wednesday, June 21, 2000

J C Sutton (via FAX 760-436-5777)  
Mission Energy  
531 Encinitas Blvd Suite 200  
Encinitas, CA 92024

Dear J C:

As we have discussed, and as referenced in our Letter of Intent dated May 24, 2000, this letter shall serve as a letter agreement between Wasatch Oil & Gas Corporation ("Wasatch") and Mission Energy, LLC ("Mission") Inasmuch as Mission desires to transfer their ownership in the Leases ("Leases") described on the attached "Exhibit A." and the operations of the Jacks Canyon Unit ("JCU") to Wasatch, and Wasatch desires to take assignment of the Leases and to operate the JCU, the parties agree as follows

1. Mission will assign to Wasatch all record title and working interest to all the Leases except for the wellbore rights and attributable spacing unit relating to the Lavinia #1-32 well.
2. Mission will have a right to participate in a "trade" relating to a drilling deal that Wasatch may be successful in putting together on the Leases, but only on the Leases listed on Exhibit A. Mission's participation will be proportionally similar to whatever Wasatch is able to retain in a trade with a third party. For example, if Wasatch is able to sell a drilling deal in which Wasatch is carried for 25% of the drilling of a well, then Mission will have the option to receive 25% of the carry that Wasatch receives. For this example Mission's carry would be 25% of 25% or 6.25%.
3. The terms of any trade obtained by Wasatch will be offered to Mission. If Mission elects to accept the terms then an operating agreement will be executed. If Mission elects not to accept the terms of the trade then Wasatch can proceed without Mission. Consequently, if Mission elects not to participate in any trade then Mission will have been deemed to relinquish any and all interest in the Leases. If Mission elects to participate in a trade then assignments will be made after an operating agreement is executed and after a well is completed on a particular lease.
4. Wasatch will work in good faith to meet the JCU obligations as defined by the BLM. However, due to the time constraints and requirements that at this point are not fully known, Wasatch makes no guarantee that these obligations will be met.
5. Mission will fully indemnify Wasatch for any obligation relating to the Lavinia #1-32 well. Wasatch accepts no financial obligation relating to this well. Mission will continue to have responsibility for financial obligations of the Lavinia #1-32 well, including lease bonding.
6. Mission will assign JCU operations to Wasatch.
7. Mission will work in good faith transfer to Wasatch any pending APD's on the Leases.
8. Any cost incurred by Wasatch to get the Leases in good standing, effective the date of this letter, will be reimbursed to Wasatch by Mission within 10 days notice, except for Bennis/Horsehead Leases. JCS



PO Box 699 • Farmington, UT 84025-0699 • Tel (801) 451-9200 • Fax (801) 451-9204

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2555

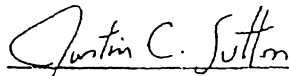
- 9 The letter can be executed by facsimile.
- 10 Wasatch will reimburse Mission for paying the rentals on the following leases in the following amounts: ML - 43798, \$678.40; UTU- 62890, \$640.00; UTU - 66801, \$716.00. UTU - 60470, \$1,595.00. The total amount of \$3,629.40 being paid upon execution of this document and delivery to Wasatch of the assignments.

Sincerely,

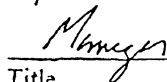


Todd Cusick  
President

AGREED AND ACCEPTED THIS 21<sup>st</sup> DAY OF JUNE, 2000, FOR MISSION ENERGY.  
LLC. BY



Justin C. Sutton

  
Title

KM00002

2556

EXHIBIT A

Jacks Canyon Unit Leases

UTU - 65486

UTU - 69463

UTU - 60470

UTU - 62890

UTU - 66801

ML - 43798

ML - 43541 (Record Title N/2NE/4 W/2. S/2SE/4, NE/SE/4, Operating Rights NW/4SE/4.  
Section 36. below depth of 3,398 feet)

Burns/Horse Bench Area Leases

UTU - 62645

UTU - 65782

UTU - 65783

KM00003

E-3

2557

Tab F

# MINERAL LEASE ASSIGNMENT FORM

MINERAL LEASE NO. 43541

RECORD TITLE ASSIGNMENTS:

☐ TOTAL  
☐ INTEREST  
☒ PARTIAL  
☐ OVERRIDING ROYALTY  
OPERATING RIGHTS ASSN. ☐

The undersigned, as owner of interest as hereinafter specified in and to ML 43541 as designated, for good and valuable consideration and Ten DOLLARS does hereby apply for approval of this assignment and hereby assigns to Wasatch Oil & Gas Corporation  
P.O. Box 699  
ADDRESS: Farmington, UT 84025-0699  
rights, title, and interest in rights and privileges as lessee in such lands, to the extent indicated subject to the reservation of overriding royalties as herein noted:

1. Land affected by this assignment in County of Carbon, State of Utah, as described herein:

T. 12 S., R. 16 E., Carbon County, Utah  
Sec. 32: SW¼, E½SE¼, SW¼SE¼, NW¼, N½NE¼;

520.00 ACRES

2. Interest of assignor in such lands (Note % of 100%) 100%  
3. Extent of such interest conveyed to Assignee (Note % of 100%) 100%  
4. Extent of interest retained by Assignor after assignment (Note % of 100%) None  
5. Overriding royalty reserved herein to Assignor (Note percentage only) None  
6. Overriding royalty previously reserved (Note percentage only) Of Record

I hereby certify that the statements made herein are true, complete, and correct to the best of the undersigned's knowledge and belief and are made in good faith. Approval of this application and assignment should be considered approval only under rights, interests, and title as held by assignor.

Executed this 23<sup>rd</sup> day of June, 2000.

Just C. Sutton  
(Lessee - Assignor)

LESSEE-ASSIGNOR'S ACKNOWLEDGEMENT ASSIGNMENT APPROVED

STATE OF Calif  
COUNTY OF San Diego

JUL 05 2000

On the 23 day of June, 2000, personally appeared before me Heather Holdorf, signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION

Given under my hand and seal this 23 day of June, 2000.

Commission Expires 4-10-02

Document may be duplicated



Heather Holdorf  
NOTARY PUBLIC, residing at:  
2775 Via de la Valle  
Del Mar CA 92014

F-1  
73



**INSTRUCTIONS:** Assignment must be submitted in duplicate. Total Assignment—\$30, Interest, Operating Rights, and Overriding  
Valty Assignments—\$30, and Partial Assignment—\$50.

**INDIVIDUAL'S ACCEPTANCE OF ASSIGNMENT (ASSIGNEE)  
AFFIDAVIT OF CITIZENSHIP OF ASSIGNEE**

(we) \_\_\_\_\_ on oath, do solemnly swear that I am (we are) at the present time (a) \* \_\_\_\_\_  
Citizen(s) of the United States of America and of legal age, and I (we) hereby assume and agree to perform all of the covenants and  
obligations of said lease on the part of lessee(s) to be kept and performed, and accept the foregoing instrument.

scribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_. BY: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

NOTARY PUBLIC, residing at: \_\_\_\_\_

**ACCEPTANCE OF ASSIGNMENT—CORPORATE (Assignee)**

nes now Woroteh Oil Co., a corporation of Utah and hereby accepts the assignment from Missou  
Energy LLC of Colorado ML No. 43541, which assignment is dated 6-23-2000, subject to all of the  
covenants and obligations of said Lessee.

WITNESS WHEREOF, Woroteh Oil Co. has executed this acceptance this 26 day of June, 20 00.

(Assignee)  
BY:

Todd Cusick, President  
(Officer, Agent, Attorney-in-Fact)

**ASSIGNEES ACKNOWLEDGEMENT (Corporate)**

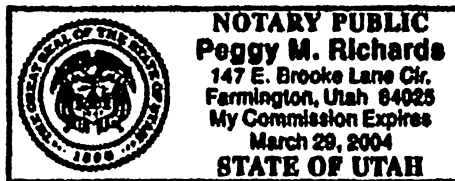
STATE OF Utah )

:ss

COUNTY OF Davis )

On the 26th day of June, 20 00, personally appeared before me Todd Cusick, President  
being by me duly sworn did say, each for himself, that (he, she, or they) is an officer, agent or Attorney-in-Fact for the assignee and  
authorized to accept this assignment and has executed the same and the seal affixed is the seal of said corporation.

Commission Expires: 3/29/04



Peggy M. Richards  
NOTARY PUBLIC, residing at: \_\_\_\_\_

**NOTE:** a\* Insert here whether native born or naturalized. If naturalized, it will be necessary to file with this office Proof of Citizenship  
Declaration of Intention to become a citizen in the form of a letter of certificate of verification from Court of Issuance, and  
registration fee of \$1.00.

F-2

RECEIVED  
JUN 29 2000  
TRUST LANDS  
ADMINISTRATION

Rinda Uredondo

3-01-04

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

## MINERAL LEASE ASSIGNMENT FORM

MINERAL LEASE NO. 43541

RECORD TITLE ASSIGNMENTS:

☐ TOTAL  
☐ INTEREST  
☐ PARTIAL  
☐ OVERRIDING ROYALTY  
OPERATING RIGHTS ASSN. X

The undersigned, as owner of interest as hereinafter specified in and to ML 43541 as designated, for good and valuable consideration and Ten DOLLARS does hereby apply for approval of this assignment and hereby assigns to

Wasatch Oil & Gas Corporation

P.O. Box 699

ADDRESS: Farmington, UT 84025-0699

the rights, title, and interest in rights and privileges as lessee in such lands, to the extent indicated subject to the reservation of overriding royalties as herein noted:

- 1 Land affected by this assignment in County of Carbon, State of Utah, as described herein:

T. 12 S., R. 16 E., Carbon County, Utah  
Sec. 32: NW¼SE¼;

Limited to the interest below the stratigraphic equivalent of 3,398 feet to the center of the earth;

40.00  
80.00 ACRES

2. Interest of assignor in such lands (Note % of 100%) 100%  
3. Extent of such interest conveyed to Assignee (Note % of 100%) 100%  
4. Extent of interest retained by Assignor after assignment (Note % of 100%) None  
5. Overriding royalty reserved herein to Assignor (Note percentage only) None  
6. Overriding royalty previously reserved (Note percentage only) Of Record

It is hereby certified that the statements made herein are true, complete, and correct to the best of the undersigned's knowledge and belief and are made in good faith. Approval of this application and assignment should be considered approval only under such rights, interests, and title as held by assignor.

Executed this 23<sup>rd</sup> day of JUNE, 20 00.

Just C. Sutfin  
(Lessee - Assignor)

LESSEE-ASSIGNOR'S ACKNOWLEDGEMENT

ASSIGNMENT APPROVED

STATE OF Calif.

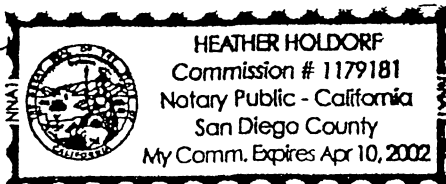
COUNTY OF San Diego

JUL 05 2000

On the 23 day of June, 20 00, personally appeared before me Heather Holdorf, signers of the above instrument, who duly acknowledged to me that he executed the same.

Given under my hand and seal this 23 day of June, 20 00.

My Commission Expires: 4-10-02



\*This document may be duplicated

Heather Holdorf  
NOTARY PUBLIC, residing at:  
2775 Via de la Valle  
Del Mar CA 92014

2558

F-3

INSTRUCTIONS: Assignment must be submitted in duplicate. Total Assignment--\$30, Interest, Operating Rights, and Overriding Royalty Assignments--\$30, and Partial Assignment--\$50.

INDIVIDUAL'S ACCEPTANCE OF ASSIGNMENT (ASSIGNEE)  
AFFIDAVIT OF CITIZENSHIP OF ASSIGNEE

I, (we) \_\_\_\_\_ on oath, do solemnly swear that I am (we are) at the present time (a) \* \_\_\_\_\_ Citizen(s) of the United States of America and of legal age, and I (we) hereby assume and agree to perform all of the covenants and obligations of said lease on the part of lessee(s) to be kept and performed, and accept the foregoing instrument.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. BY: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC, residing at: \_\_\_\_\_

ACCEPTANCE OF ASSIGNMENT--CORPORATE (Assignee)

Comes now Wasatch Oil & Gas, a corporation of Utah and hereby accepts the assignment from Mission Energy LLC of Colorado ML No. 413541, which assignment is dated 6-25-2000, subject to all of the covenants and obligations of said Lessee.

IN WITNESS WHEREOF, Wasatch Oil & Gas has executed this acceptance this 26<sup>th</sup> day of June, 2000.

(Assignee)

BY: \_\_\_\_\_

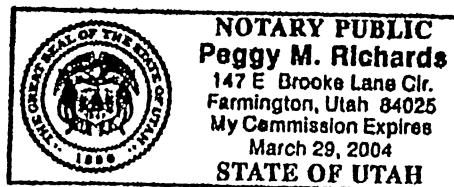
Todd Cusick, President  
Todd Cusick, President  
(Officer, Agent, Attorney-in-Fact)

ASSIGNEES ACKNOWLEDGEMENT (Corporate)

STATE OF Utah )  
:ss  
COUNTY OF Davis )

On the 26<sup>th</sup> day of June, 2000, personally appeared before me Justin C. Sutton, Manager, Todd Cusick, President who being by me duly sworn did say, each for himself, that (he, she, or they) is an officer, agent or Attorney-in-Fact for the assignee and is authorized to accept this assignment and has executed the same and the seal affixed is the seal of said corporation.

My Commission Expires: 3/29/04



Peggy M. Richards  
NOTARY PUBLIC, residing at: \_\_\_\_\_

NOTE: a\* Insert here whether native born or naturalized. If naturalized, it will be necessary to file with this office Proof of Citizenship or Declaration of Intention to become a citizen in the form of a letter of certificate of verification from Court of Issuance, and registration fee of \$1.00.

F-4

RECEIVED

JUN 29 2000

TRUST LANDS  
ADMINISTRATION

# MINERAL LEASE ASSIGNMENT FORM

MINERAL LEASE NO. 43798  
~~School and Institutional Trust Lands Administration~~  
~~of the State of Utah~~  
675 East 500 South Suite 500  
Salt Lake City, Utah 84102

RECORD TITLE ASSIGNMENTS:

☒ TOTAL  
☐ INTEREST  
☐ PARTIAL  
☐ OVERRIDING ROYALTY  
OPERATING RIGHTS ASSN. ☐

I hereby certify that this reproduction is a true and correct copy of the official record on file in this office.

*Rinda Arredondo 3-01-04*

The undersigned, as owner of interest as hereinafter specified in and to ML 43798 as designated, for good and valuable consideration and Ten DOLLARS does hereby apply for approval of this assignment and hereby assigns to

Wasatch Oil & Gas Corporation

P.O. Box 699

ADDRESS: Farmington, UT 84025-0699

the rights, title, and interest in rights and privileges as lessee in such lands, to the extent indicated subject to the reservation of overriding royalties as herein noted:

1. Land affected by this assignment in County of Carbon, State of Utah, as described herein:

T. 12 S., R. 16 E., Carbon County, Utah  
Sec. 32: S $\frac{1}{2}$ NE $\frac{1}{4}$ ,

80.00 ACRES

2. Interest of assignor in such lands (Note % of 100%) 100%  
3. Extent of such interest conveyed to Assignee (Note % of 100%) 100%  
4. Extent of interest retained by Assignor after assignment (Note % of 100%) None  
5. Overriding royalty reserved herein to Assignor (Note percentage only) None  
6. Overriding royalty previously reserved (Note percentage only) Of Record

It is hereby certified that the statements made herein are true, complete, and correct to the best of the undersigned's knowledge and belief and are made in good faith. Approval of this application and assignment should be considered approval only under such rights, interests, and title as held by assignor.

Executed this 23<sup>rd</sup> day of June, 20 00.

*Just C. Sutton*  
(Lessee/Assignor)

LESSEE-ASSIGNOR'S ACKNOWLEDGEMENT

ASSIGNMENT APPROVED

STATE OF Calif

COUNTY OF San Diego

JUL 05 2000

On the 23 day of June, 20 00, personally appeared before me Heather Holdorf, signers of the above instrument, who duly acknowledged to me that he executed the same.

SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION

2562

Given under my hand and seal this 23 day of June, 20 00.

My Commission Expires: 4-10-02

\*This document may be duplicated



*Heather Holdorf*  
NOTARY PUBLIC, residing at:  
2775 Via de la Valle  
Del Mar CA 92014

F-5

INSTRUCTIONS: Assignment must be submitted in duplicate. Total Assignment--\$30, Interest, Operating Rights, and Overriding Royalty Assignments--\$30, and Partial Assignment--\$50.

INDIVIDUAL'S ACCEPTANCE OF ASSIGNMENT (ASSIGNEE)  
AFFIDAVIT OF CITIZENSHIP OF ASSIGNEE

I, (we) \_\_\_\_\_ on oath, do solemnly swear that I am (we are) at the present time (a) \* \_\_\_\_\_ Citizen(s) of the United States of America and of legal age, and I (we) hereby assume and agree to perform all of the covenants and obligations of said lease on the part of lessee(s) to be kept and performed, and accept the foregoing instrument.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. BY: \_\_\_\_\_

My Commission Expires. \_\_\_\_\_

NOTARY PUBLIC, residing at: \_\_\_\_\_

ACCEPTANCE OF ASSIGNMENT--CORPORATE (Assignee)

Comes now Wasatch Oil & Gas, a corporation of Utah and hereby accepts the assignment from Missouri Energy LLC of Colorado ML No. 413798, which assignment is dated 6-23-2000, subject to all of the covenants and obligations of said Lessee.

IN WITNESS WHEREOF, Wasatch Oil & Gas has executed this acceptance this 26 day of June, 2000.

(Assignee)  
BY:

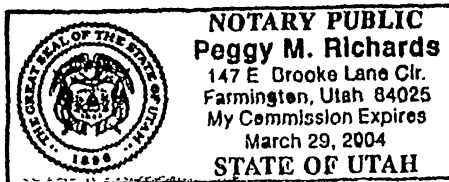
Wasatch Oil & Gas Corporation  
Todd Cusick, President  
(Officer, Agent, Attorney-in-Fact)

ASSIGNEES ACKNOWLEDGEMENT (Corporate)

STATE OF Utah )  
:ss  
COUNTY OF DAVIS )

On the 26th day of June, 2000, personally appeared before me Todd Cusick, President  
Justin C. Sutton, Manager  
who being by me duly sworn did say, each for himself, that (he, she, or they) is an officer, agent or Attorney-in-Fact for the assignee and is authorized to accept this assignment and has executed the same and the seal affixed is the seal of said corporation.

My Commission Expires: 3/29/04



Peggy M. Richards  
NOTARY PUBLIC, residing at: \_\_\_\_\_

NOTE: a\* Insert here whether native born or naturalized. If naturalized, it will be necessary to file with this office Proof of Citizenship or Declaration of Intention to become a citizen in the form of a letter of certificate of verification from Court of Issuance, and registration fee of \$1.00.

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JUN 29 2000

TRUST LANDS  
ADMINISTRATION

Tab G

Sinda Medondo 3-01-04

SALT LAKE CITY, UT 84102-2818

Form Approved December 26, 1983

OOB READ BP DG

MINERAL LEASE NUMBER ML 43541-A

MINERAL LEASE APPLICATION NO. 43541 GRANT: SCH

OIL, GAS, AND HYDROCARBON LEASE

THIS UTAH STATE MINERAL LEASE AND AGREEMENT entered into and executed in duplicate on the 8th day of September, 19 87, by and between the STATE OF UTAH, acting and through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, with its offices located at 675 East 500 South, Suite 500, Salt Lake City, UT 84102-2818, hereinafter called the "LESSOR," and

WASATCH OIL & GAS CORPORATION  
P.O. BOX 699  
FARMINGTON UT 84025-0699

hereinafter called the "LESSEE", whether one or more.

WITNESSETH:

SECTION 1. RIGHTS OF LESSEE

Lessor, in consideration of the rents and royalties to be paid and the covenants and agreements contained herein and to be performed by Lessee, does hereby grant and lease to Lessee the following described tract of land in County of CARBON, State of Utah, to-wit:

TOWNSHIP 12 SOUTH, RANGE 16 EAST, SLB&M.  
Sec. 32: SW $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$

containing 520.00 acres, more or less, for the purposes and with the exclusive rights of prospecting for, mining for, of excavating, quarrying, or stripmining for and/or drilling for oil, natural gas, elaterite, crite, other hydrocarbons (whether the same be found in solid, semisolid, liquid, vaporous or any other including tar, bitumen, asphaltum, and maltha, other gases (whether combustible or non-combustible), r, (except the metallic sulphide such as pyrite, marcasite and chalcopyrite) and associated substances of

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3-01-04

OG&H - MINERALS

- 2 -

every kind or nature and whether or not similar to those hereinabove mentioned but excluding coal and oil (the hydrocarbons and other materials granted hereby being hereinafter collectively called "said substances") producing, taking, and removing such substances from the above described lands, the Lessee to have the right to construct and maintain on said lands all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, subject, however, to the conditions hereinafter set forth.

## SECTION 2. TERM OF LEASE

This lease unless terminated at an earlier date as hereinafter provided, shall be for a primary term of ten years beginning on and after the first day of the month next succeeding the date of issuance hereof and so long after the primary term as:

- (a) Said substances are being produced in paying quantities from the leased premises or lands pooled or unitized with or constituting an approved mining or drilling unit in respect to the leased premises; or
- (b) The Lessee pays the actual production royalty as prescribed in this lease on said substances produced from the leased premises or if production of said substances has not been commenced on the leased lands and all or a portion of the leased lands are included in a participating area of an approved pooled or unitized area Lessee pays production royalty on the portion of the produced leased substances assigned to this lease from the participating area; or
- (c) The Lessee is engaged in diligent operations, exploration, research or development activity which is reasonably calculated to advance development or production of said substances from the leased premises or lands pooled or unitized with or constituting a mining or drilling unit in respect to the leased premises; and
- (d) Lessee pays a minimum royalty equal to three times the annual rental as provided in Section 3 of this lease.

In respect to the duration of the term of this lease, gas shall be deemed to be produced in paying quantities from any shut-in gas well on the leased lands which is capable of producing gas in paying quantities whenever it is such times as such gas cannot be reasonably marketed at a reasonable price by reason of existing marketing or transportation conditions: provided, however, that Lessee shall pay to the State an additional rental equal to the annual rental payable by such Lessee under the terms of the lease, said rental to be paid on or before the next annual rental paying date next ensuing after the date said well was shut-in, on or before said rental date after. Upon the commencement or marketing of gas from said well or wells, the royalty paid for the lease in which the gas is first marketed shall be credited upon the rental payable as provided hereunder to the State each year.

The phrase "produced in paying quantities" as used in this lease shall mean the production of said substances from the above-described lands in an amount which is sufficient during each lease year to yield a



minimum royalty payment to Lessor equal to at least \$1.50 per acre for all acres of and held by Lessee under this lease.

### SECTION 3. ANNUAL RENTAL

Lessee agrees to pay to Lessor annually in advance as rental the sum of One Dollar (\$1.00) per acre or fractional part thereof, per annum for the primary term of this lease (ten years) and if this lease is extended beyond the primary term as provided in Section 2, the sum of two dollars (\$2.00) for the 11th thru the 15th year and the sum of three (\$3.00) for the 16th thru the 20th year. Rental will be paid for each year in advance on or before the first day of the month following the anniversary date of this lease, except the rental for the first year which has been paid with the application for this lease.

### SECTION 4. ROYALTIES

(a) Lessee agrees to pay to Lessor a royalty of sixteen and two-thirds ( $16 \frac{2}{3}$ ) percent of the oil produced, saved and sold from the leased premises; or at the option of Lessor, to pay to Lessor the cash value of such royalty. When paid in money, the royalty shall be calculated upon the reasonable market value of the oil at the well, including any subsidy or extra payment which the Lessee, or any successors in interest thereto, may receive, without regard to whether such subsidy or extra payment shall be made in the nature of money or other consideration, and, in no event shall the royalties be based upon a market value less than that used by the United States in the computation of royalties, if any, paid by this lessee to the United States of America on oil of like grade and gravity produced in the same field. When Lessor elects to take royalty oil in kind, such royalty oil shall be delivered on the premises where produced without cost to Lessor at such time and in such tanks provided by Lessee as may reasonably be required by Lessor, but in no event shall Lessee be required to hold royalty oil in storage beyond the last day of the calendar month next following the calendar month in which the oil was produced. Lessee shall not be responsible or be held liable for the loss or destruction of royalty oil in storage from causes under which Lessee has no control. For royalty purposes, the word "oil" shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form, provided, however, oil produced from a reservoir with zero or near zero initial shut-in pressure shall bear the royalty rate specified in Section 4(c).

(b) Gas - Lessee agrees to pay to Lessor a royalty of sixteen and two-thirds ( $16 \frac{2}{3}$ ) percent of the reasonable market value at the well of all gas produced and saved or sold from the leased premises. Where gas is sold under a contract, and such contract has been approved in whole or conditionally by the Lessor, the reasonable market value of such gas for the purpose of determining the royalties payable hereunder, shall be the price at which the production is sold, provided that in no event shall the price for gas be less than that received by the United States of America for its royalties from gas of like grade and quality from the same field; provided, however, the reasonable market value of processed or manufactured or extracted products for the purpose of computing royalty hereunder, shall be the value after deducting the costs of processing, extracting, or manufacturing, except that the deduction deducting the costs of processing, extracting, or manufacturing may not exceed  $\frac{2}{3}$  of the amount of the gross of any such products without approval by the Lessor and, provided further, that the market value of extracted, processed, or manufactured products used in the computation of

SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION  
675 EAST 500 SOUTH, #500  
SALT LAKE CITY, UT 84102-2818

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royalties hereunder shall not be less than the value used by the United States in its computation of royalties on similar products resulting from production of like grade and quality in the same field.

(c) Other Substances - For the first ten years of commercial production, Lessee agrees to pay Lessor a royalty of six and one-fourth (6 ¼ %) of the reasonable market value of all other hydrocarbon substances which are produced from a reservoir where the initial shut-in pressure is zero or near zero which in the discretion of the School and Institutional Trust Lands Administration indicated the absence of sufficient motive force for the gaseous substances to enter the well bore, and where the said substances cannot be produced except by mining or removing the host rock or require the application of heat and/or solvents to remove the hydrocarbon substances from the host rock into the well bore or other form of catch trap or basin. The royalty may, at the discretion of Lessor, be increased after the first ten years of commercial production at a rate not to exceed one percent (1%) per annum until a maximum of 12 ½ % is reached; provided, however, notwithstanding the foregoing, the royalty which Lessee shall pay at any time under this lease may, after notice and hearing, be fixed by Lessor up to the highest royalty rate then being paid, but in any event not to exceed 12 ½ % by a Lessee producing from the same general area, reservoir, or deposit.

(d) Sulphur - Lessee agrees to pay Lessor 12 ½ percent of the reasonable market value of all sulphur which Lessee shall produce, save, or sell from the leased premises.

The basis for computing the reasonable market value of substances covered in this (c) and (d) shall be as follows:

(i) If the substances are sold under a bonafide contract of sale, the amount of money or its equivalent actually received from the sale of the substances less reasonable costs, if any, of transporting the substances from the place where extracted to the place where, under the contract of sale, the leased substances are to be delivered, shall be regarded as the reasonable market value.

(ii) If the leased substances extracted are treated at a mill, smelter, processing plant or reduction works which received the substances from independent sources and which is owned or controlled by the same interest owning or controlling the mine, such treatment shall be treated as a sale within the meaning of this section for the purpose of determining market value, and in such event a rate or charge for sampling, assaying, milling, melting or refining the leased substances therefrom shall be deducted, which shall not exceed an amount to be determined by applying the same rates as are applied by such mill, smelter, or reduction works or competing works on ores of substantially like characteristics and like quantities received from independent sources. In the event of controversy, the Lessor shall have the power to determine such rates and charges. Transportation charges may also be deducted as provided in subdivision (i) hereof.

(iii) If a mill or other reduction works is operated exclusively in connection with a mine, such mill or reduction works shall be treated as a part of the mine, and the costs of operating the mill or reduction works shall, for the purpose of fixing the royalty set forth in this lease, be regarded as part of the costs of mining, and the proportionate cost of assaying, sampling, smelting, refining, and transportation only shall be deducted as herein provided.

SURFACE ESTATE INSTITUTIONAL  
TRUST LANDS ADMINISTRATION  
675 EAST 500 SOUTH, #500  
SALT LAKE CITY, UT 84102-2918

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(e) Time of Payment - All royalty on production during any calendar month shall be due and payable by Lessee to Lessor not later than the last day of the calendar month following that in which produced.

(f) Lessor agrees that upon request by the Lessee and after notice and hearings, upon good cause shown, the annual rental and/or the royalty rates specified in this lease may be reduced at the discretion of Lessor. However, upon the reduction of said rates, Lessee agrees that Lessor shall have the right to reduce all outstanding overriding royalty interest proportionately.

Lessor may at its option take its royalty gas in kind at the well heads, provided expressly that Lessee shall be under no obligation to furnish any storage facilities for royalty gas.

SECTION 5. RIGHTS RESERVED TO LESSOR - The Lessor expressly reserves:

(a) Easements and Rights of Way - The right to permit for joint or several use in a manner which will not unreasonably interfere with Lessee's operations hereunder, such easements or rights of way upon, through or in the land hereby leased as may be necessary or appropriate to the workings of other lands belonging to the Lessor containing mineral deposits or to the working of the land hereby leased for other than the hereby leased substances, and for other public purposes.

(b) Surface Disposition - Leasing for Other Deposits - The right to use, lease, sell, or otherwise dispose of the surface of said hereby leased lands, or any part thereof, under existing State laws, subject to the rights herein granted and insofar as in the judgment of the Lessor, said surface is not necessary for the use of the Lessee in the exercise of the rights granted Lessee hereunder; and also the right to lease mineral deposits, other than the hereby leased substances, which may be contained in said hereby leased lands.

(c) Unitization - The right, with the consent of the Lessee, to commit the hereby leased lands to a unit or cooperative plan of development and to establish, alter or change the drilling, producing and royalty requirements and term of this lease to conform thereunto.

(d) Production Control - The right to alter or modify the quantity and rate of production to the extent that waste may be eliminated or that production may conform to the Lessee's fair share of allowable production under any system of state or national curtailment and proration authorized by law.

SECTION 6. DRILLING AND DEVELOPMENT PROVISIONS PERTAINING TO OIL AND GAS OPERATIONS

(a) Offset Wells - Subject to the rights of surrender as provided in this lease, Lessee shall protect the oil and gas under the leased premises from drainage from adjacent lands or leases, and the Lessor expressly reserves the right to require the commencement, completion, and operation of a well or wells necessary for the protection of the leased premises from adjacent lands or leases.

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3-01-04

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(b) Diligence - Proper Operations - Lessee agrees:

(1) After discovery and subject to the right of surrender herein provided, to exercise reasonable diligence in producing oil and gas and in the drilling and operating of wells on the land covered hereby, unless consent to suspend operations temporarily is granted by the Lessor; and

(2) To carry on all operations hereunder in a good workmanlike manner in accordance with approved methods and practices, having due regard for the prevention of waste of oil and gas, or the entrance of water to the oil or gas bearing sands or strata, to the destruction or injury of such deposits, to the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; and

(3) To take every reasonable precaution to prevent water from migrating from one stratum to any other and to protect and water-bearing stratum from contamination; and

(4) To securely and properly plug in an approved manner any well before abandoning it; and

(5) To drill any well in conformity with law and with the rules and regulations of the Utah Board of Oil, Gas, and Mining; and

(6) To conduct all operations subject to the inspection of the Lessor and to carry out at the Lessee's expense all reasonable orders and requirements of the Lessor relative to the prevention of waste and preservation of the property, and the health and safety of workmen; and on failure of the Lessee so to do, the Lessor shall have the right, together with other recourse herein provided, to enter on the property to repair damages or prevent waste at the Lessee's expense; and

(7) To conduct all operations under this lease in accordance with the Lessor's rules and regulations governing exploration for and production of oil and gas which are now in force, and with such reasonable rules and regulations as hereafter may be adopted by the Lessor; and

(8) To reimburse the owner or Lessee of the surface of the leased premises for actual damages thereto and to improvements thereon resulting from Lessee's operations hereunder, provided that Lessee shall not be held responsible for acts of providence or occurrences beyond Lessee's control.

(9) Whenever operations for the drilling for oil and gas are planned on Lessor's lands, no special notice need be filed so long as the required notices are filed with the Division of Oil, Gas, and Mining and a copy of said notice is filed with Lessor. When a drill site is located on Lessor's lands, any topsoil which is removed will be stockpiled on the site and will be redistributed on the site at the completion of operations and the land seeded with grasses and/or native plants by Lessee or operator as prescribed by Lessor. All mud pits will be filled and material and debris will be removed from the site at the completion of operations.

## SECTION 7. BOND

Lessee agrees at the time of commencement of operations to furnish a bond with an approved corporate surety company authorized to transact business in the State of Utah, or such other surety as may be acceptable to the Lessor, in the penal sum of not less than Five Thousand Dollars (\$5,000.00) conditioned upon the payment of all moneys, rentals, and royalties accruing to the Lessor under their terms hereof, and upon the full compliance with all other terms and conditions of this lease and the Rules and Regulations relating hereto, and also conditioned on the payment of all damages to the surface and improvements thereon where the lease covers lands, the surface of which has been sold or otherwise leased. Such bond or bonds furnished prior to the development of the lands contained in this lease may be increased in such reasonable amounts as the Lessor may decide after discovery of said substances.

The Lessor may waive the provision of this section, as to this lease, upon the furnishing of a blanket bond by Lessee extending to and including Lessee's operations hereunder.

## SECTION 8. LOGS - REPORTS - MAPS

Lessee agrees to keep a log in a form approved by the Board of Oil, Gas and Mining, of each well drilled by Lessee on the leased lands and agrees to file the same, together with such reports, maps and supplements as may be required, with said Commission. Lessee also agrees to furnish Lessor copies of such logs, reports and any other information which Lessor may request from time to time.

## SECTION 9. NOTICE OF WATER ENCOUNTERED

In the drilling of wells under authority of this lease, all water-bearing strata shall be noted in the log and Lessee shall promptly give notice to Lessor when water has been encountered and such notice shall include an estimate of the possible amount of flow of said water and whether or not the water is fresh water.

## SECTION 10. DEFAULT OF LESSEE

Upon failure or default of the Lessee to comply with any of the conditions or covenants herein, the Lessor may cancel this lease and such cancellation shall extend to and include all rights granted hereunder as to the whole of the tract hereinabove described, but shall not extend to nor affect the rights of this Lessee under other leases or partial assignments of this lease which have been approved by Lessor upon which no default has been made, provided, however, that in the event of any default by Lessee, Lessor shall, before cancellation, send a notice of intention to cancel said lease to the Lessee by registered or certified return receipt mail addressed to post office address of said Lessee as first hereinabove stated or as shown by the records of the Lessor, which notice shall specify the default for which cancellation is to be made, and, if within thirty (30) days from the date of mailing said notice, Lessee has not remedied the violation or rectified the condition specified and notified Lessor thereof in writing, Lessor may thereupon cancel the lease without further notice to Lessee.

SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION  
675 EAST 500 SOUTH, #500  
SALT LAKE CITY, UT 84102-2818

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## SECTION 11. OPERATION REQUIREMENTS - PREVENTION OF WASTE

Lessee covenants that no waste shall be committed on the land and agrees to develop and produce said substances which are susceptible of production with reasonable care and skill and in conformity with all applicable laws of the United States and the State of Utah, and the rules and regulations of the School and Institutional Trust Lands Administration, now in effect or hereafter promulgated, and to carry on all mining, extractions, reducing, refining, and other operations on or below the surface of the earth by safe and economically feasible methods and practices and to take all proper and reasonable steps and precautions to prevent waste of or damages to said substances or other mineral deposits on said land. Should Lessee elect to dump waste products upon the leased lands Lessee shall secure Lessor's consent as to the situs and manner of maintenance of the waste dump; it being understood that Lessor contemplates designating the manner of operation and maintenance of a waste dump so that the land used for dumping of waste will be suitable for other uses. Lessee shall not fence any watering place on the leased lands without prior approval of Lessor, nor shall Lessee permit or contribute to the pollution of waters useful for domestic or agricultural purposes.

In those instances where strip or open-pit mining operations or other operations which will disturb the surface of Lessor's lands are utilized, Lessor may require rehabilitation of the surface of the disturbed area. At least 30 days prior to commencement, Lessee will submit to Lessor plans for such operations. Lessor will at the time outline the rehabilitation program required by lessor for the particular property in question. In all cases the Lessee must agree to slope the side of all excavations to a ratio of not more than one foot (1') vertically for each two feet (2') of horizontal distance unless otherwise approved by Lessor prior to commencement of operations. Such sloping is to become a normal part of the operation of the leased premises so as to keep pace with such operation to the extent that such operation shall not at any time constitute a hazard. Whenever practicable, all pits or excavations shall be shaped to drain, and in no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material mined, but not removed from the premises, is to be used to fill the pits and leveled, unless consent of the Lessor to do otherwise is obtained so that at the termination of the lease the land will as nearly as practicable approximate its original configuration. The Lessee or operator must strike off the peaks and ridges of spoil banks to a width satisfactory to the School and Institutional Trust Lands Administration, Lessor may require that all topsoil in the affected area shall be removed and stockpiled until the completion of operations when in its opinion such action is justified. Upon completion of operations, the stockpiled topsoil will be redistributed on the affected area, and the land reseeded with grasses and/or native plants by Lessee as prescribed by Lessor.

## SECTION 12. MAPS AND REPORTS

Where Lessee conducts mining operations under this lease, Lessee agrees to keep clear, accurate and detailed maps on tracing cloth, on a scale of not more than fifty (50) feet to the inch, of Lessee's working in each section of leased lands, oriented to a public land corner so that the maps can be readily and correctly superimposed, and to furnish to the Lessor annually, or upon demand, certified copies of such maps and any written reports of operations as Lessor may call for.

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SALT LAKE CITY, UT 84102-2818

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### SECTION 13 IMPROVEMENTS AND REMOVAL OF SAME

Upon termination of this lease for any cause, the Lessee, upon payment of all amounts due Lessor, shall remove from the leased premises all property (including fixtures), machinery, equipment, and supplies. The leased land shall be surrendered in good usable condition in as near the natural condition of the land as is reasonably practical.

### SECTION 14. LESSOR'S RIGHT OF ACCESS TO LEASED PREMISES AND LESSEE'S RECORDS

Lessor, its officers and agents, shall have the right at all reasonable times to go in and upon the leased lands and premises during the term of the lease to inspect the work done thereon and the progress thereof, and the products obtained therefrom, and to post any notice on the said lands that it may deem fit and proper. Lessee shall permit any authorized representative of the Lessor to examine all books and records pertaining to operations and royalties payable to Lessor under the lease, and to make copies of any extracts from such books and records if desired.

### SECTION 15. SURRENDER BY LESSEE

Lessee may surrender this lease for cancellation by Lessor as to all or any part of the leased lands, but not less than a quarter-quarter section or surveyed lot, upon payment of all rentals, royalties, and other amounts due Lessor and by filing with the Lessor a written relinquishment. The relinquishment shall be effective as to future rental liability on the date of cancellation by Lessor.

### SECTION 16. WATER RIGHTS

If the Lessor shall initiate or establish any water rights upon the leased premises, such right shall become an appurtenance of the leased premises, and, upon the termination of the lease, shall become the property of the Lessor.

### SECTION 17. DISCOVERY OF OTHER MINERALS

Upon such notification of the Lessee to the Lessor, the Lessee shall have 60 days in which to request that the Lessor issue a lease on the newly discovered mineral substances in line with the form of lease and regular rules and regulations of the School and Institutional Trust Lands Administration regarding such mineral substances.

### SECTION 18. FAILURE OF LESSOR'S TITLE

It is understood and agreed that this lease is issued only under such title as the State of Utah may now have or hereafter acquire, and that the Lessor shall not be liable for any damages sustained by the Lessee, nor shall the Lessee be entitled to or claim any refund of rentals or royalties theretofore paid to the Lessor in the event the Lessor does not have the title to the minerals in the leased lands. If Lessor owns less than the entire and undivided fee simple estate in the leased minerals for which royalty is payable, then the royalties herein provided

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Rinda Arredondo

3-01-04

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ALT LAKE CITY, UT 84102-2818

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shall be paid the Lessor only in the proportion which its interest bears to said whole and undivided fee simple state in the said minerals for which royalty is payable.

#### SECTION 19. TRANSFERS OF INTEREST BY LESSEE

There shall be no assignment of this lease, nor of any interest therein, nor any sublease or operating agreement to the leased lands, nor any portion thereof, unless and until such assignment, transfer, sublease or operating agreement is approved by the Lessor. Any such instrument shall be filed with Lessor within ninety days from the date of final execution thereof, and when and provided it is approved by the Lessor, shall take effect as of the date of its execution. Any assignment or sub-lease made without such approval shall be void ab initio. Subject to the necessity of approval as herein set out, all of the terms, covenants, conditions, and obligations of this lease shall extend to and shall be binding upon the successor in interest of the Lessee. The Lessee further agrees not to enter into any agreements limiting, restricting, prorating, or otherwise affecting the natural production from said lands in any way or in any event without the prior written consent of the Lessor.

#### SECTION 20. NOTICES

All notices herein provided to be given or which may be given by either party to the other, except as otherwise provided by law, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed to the last known address of the parties.

#### SECTION 21. INTEREST

Interest shall accrue and be payable on all obligations arising under this lease at such rate as may be set from time to time by rule enacted by Lessor. Interest shall accrue and be payable, without necessity of demand, from the time each such obligation shall arise.

#### SECTION 22. CONSENT TO SUIT

Lessee consents to suit in the courts of the State of Utah in any dispute arising under the terms of this lease or as a result of operations carried on under this lease. Service of process in any such action is hereby agreed to be sufficient if sent by registered mail to the Lessee at the last known address appearing on Lessor's records.

#### SECTION 23. ATTORNEY'S FEES

In the event Lessor shall institute and prevail in any action or suit for the enforcement of any provision of this lease, Lessee will pay to Lessor a reasonable attorneys fee on account thereof.

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MINAL WHEELS

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IN WITNESS WHEREOF, the parties have hereunto subscribed their names the day and year first above  
written.

THE STATE OF UTAH, acting by and through the SCHOOL AND  
INSTITUTIONAL TRUST LANDS ADMINISTRATION

DAVID T. TERRY, DIRECTOR

By Thomas B. Faddies

THOMAS B. FADDIES, MINERALS SECTION MANAGER  
School & Institutional Trust Lands Administration - LESSOR

Wasatch Oil & Gas Corporation

Tim Curish - President

LESSEE

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Wanda Oil + Gas Corp. 5-01-04

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SALT LAKE CITY, UT 84102-2818

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STATE OF UTAH )  
COUNTY OF SALT LAKE )

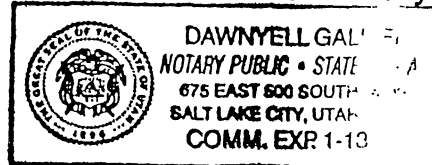
On the 15th day of Sept, 2000, personally appeared before me THOMAS B. ADDIES, who being by me duly sworn did say that he is the Minerals Section Manager of the School and Institutional Trust Lands Administration of the State of Utah and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 15th day of Sept, 2000.

Dawnyeel Gallen  
NOTARY PUBLIC, residing at: SLC, UT

My Commission Expires: 1-13-2002

STATE OF UTAH )  
COUNTY OF )



On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, personally appeared before me \_\_\_\_\_, signer of the above instrument, who duly acknowledged to me that \_\_\_\_\_ executed the same.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

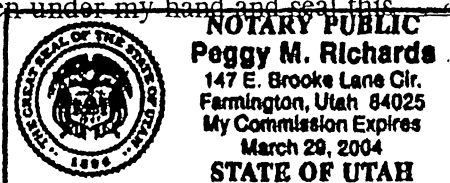
\_\_\_\_\_  
NOTARY PUBLIC, residing at:

My Commission Expires:

STATE OF UTAH )  
COUNTY OF Davis )

On the 30th day of August, 2000, personally appeared before me Todd Cusick, who being duly sworn did say that he is an officer of Wanda Oil + Gas Corp. and that said instrument was signed in behalf of said corporation by resolution of its Board of Directors, and said Todd Cusick acknowledged to me that said corporation executed the same.

Given under my hand and seal this 30th day of August, 2000.



Peggy M. Richards  
NOTARY PUBLIC, residing at: Farmington, Utah

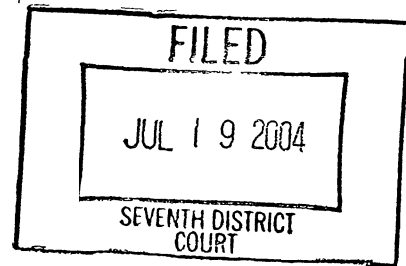
My Commission Expires: 03-29-04

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Tab H

Eric C. Olson (#4108)  
 Matthew K. Richards (#7972)  
 KIRTON & McCONKIE  
 1800 Eagle Gate Tower  
 60 East South Temple  
 P.O. Box 45120  
 Salt Lake City, Utah 84145-0120  
 Telephone: (801) 328-3600



Attorneys for Wasatch Oil & Gas, L.L.C.,  
 Wasatch Oil & Gas Production Corporation,  
 and Wasatch Gas Gathering

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
 CARBON COUNTY, STATE OF UTAH

WASATCH OIL & GAS, L.L.C., a Utah )  
 limited liability company, )  
 )  
 Plaintiff, )

vs. )

EDWARD A. REOTT, an individual, )  
 KEY ENERGY SERVICES, INC., a )  
 Maryland corporation dba Key Energy )  
 Services, Inc Four Corners Division, J- )  
 WEST OILFIELD SERVICE, INC., a Utah )  
 corporation, MISSION ENERGY, LLC, a )  
 Colorado limited liability company, and )  
 ALL OTHER UNKNOWN PERSONS OR )  
 PARTIES CLAIMING ANY RIGHT, )  
 TITLE, LIEN OR INTEREST IN THE )  
 PROPERTY DESCRIBED IN THE )  
 COMPLAINT HEREIN, )

Defendants. )

**AFFIDAVIT OF  
 TODD CUSICK**

Civil Number: 010700991

Honorable Bryce K. Bryner

GOAL, L.L.C., a Utah limited liability )  
 company, as the real party in interest to the )  
 rights of Edward Reott, Key Energy )  
 Services Lien and J-West Oilfield Lien, and )  
 REGOAL INC., a Pennsylvania )  
 Corporation, )

Counterclaim, Third Party and )  
 Crossclaim Plaintiffs, )

vs. )

WASATCH OIL & GAS L.L.C., MISSION, )  
 LLC, a Colorado limited liability company, )  
 WASATCH OIL & GAS PRODUCTION )  
 CORPORATION, a Utah corporation, )  
 WASATCH GAS GATHERING, a Utah )  
 limited liability company, BILL BARRETT )  
 CORPORATION, a Maryland corporation, )  
 and all other persons unknown claiming any )  
 right, title, estate or interest in or a lien upon )  
 the real property described herein adverse to )  
 the complainant's ownership or clouding his )  
 title thereto, )

Third Party, Counterclaim and )  
 Crossclaim Defendants )

STATE OF UTAH )  
 :ss  
 County of Salt Lake )

Todd Cusick, being first duly sworn upon oath, states as follows:

1. I am over the age of 18 and have personal knowledge of the business and affairs of Wasatch Oil and Gas, L.L.C. a Utah limited liability company ("Wasatch") and Wasatch Oil and Gas Corporation, a Utah corporation ("WOGC"), as well as the subject matter of this action.

2. On June 30, 2000, pursuant to the June 23, 2000, Letter Agreement, WOGC paid \$3,629.40 to Mission Energy as reimbursement for rental payments made on leases ML 43798

(\$678.40); UTU 62890 (\$640.00); UTU 66801 (\$716.00); and UTU 60470 (\$1,595.00). (See documents attached as Exhibit A).

3. WOGC paid \$130.00 to the School and Institutional Trust Lands Administration ("SITLA") on June 28, 2000, for assignments on leases ML 43541 and ML 43798. (See documents attached as Exhibit B).

4. On September 28, 2000, WOGC paid to SITLA a total of \$560.00 for lease rental on leases ML 43541 (\$40.00) and ML 43541A (\$520.00). (See documents attached as Exhibit C).

5. In October 2000, WOGC paid \$1,120.00 to SITLA for lease rental and minimum royalty payments on lease ML 43541. (See documents attached as Exhibit D).

6. On November 21, 2000, WOGC paid \$550.00 to SITLA for a processing fee and right of entry. (See documents attached as Exhibit E).

7. WOGC paid to SITLA in February of 2001 a fee of \$30.00 for assignment of lease ML 43541. (See documents attached as Exhibit F).

8. On March 9, 2001, WOGC paid to SITLA the total amount of \$640.00 for rental and minimum royalties on lease ML 43798. (See documents attached as Exhibit G).

9. On September 9, 2001, WOGC paid to SITLA \$1,560.00 for rental and minimum royalty on lease ML 43541A. (See documents attached as Exhibit H).

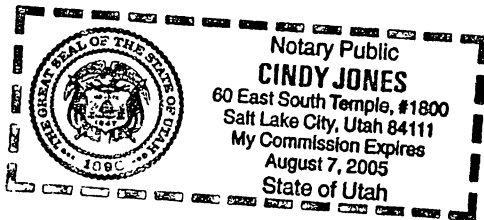
10. We also performed geology and engineering work for all of Wasatch's leases in the area, including the leases related to Section 32.

11. The documents attached hereto are true and correct copies of documents that Wasatch made available to and were inspected by Defendants' counsel at Wasatch's office in response to requests for production of documents.

DATED this 8<sup>th</sup> day of ~~May~~<sup>June</sup>, 2004.

Todd Cusick  
Todd Cusick

On this 8<sup>th</sup> day of ~~May~~<sup>June</sup>, 2004, appeared before me Todd Cusick, who affirmed under oath that he is the signer of this affidavit and the facts set forth herein are true and correct to the best of his knowledge.



Cindy Jones  
Notary Public  
Located at: SLC, Utah  
My commission expires: 8-7-05

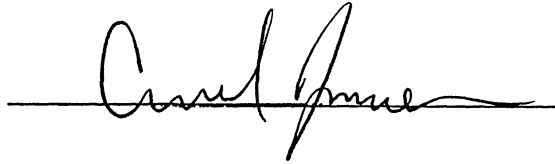
**CERTIFICATE OF SERVICE**

I hereby certify that on this the 15<sup>th</sup> day of ~~May~~ <sup>July</sup>, 2004, I caused a true and correct copy of the **AFFIDAVIT OF TODD CUSICK** to be mailed by U.S. Mail, postage prepaid to the following:

Lawrence E. Stevens, Esq.  
Gary E. Doctorman, Esq.  
Dianna M. Gibson, Esq.  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, Utah 84145-0898

Carolyn McIntosh  
David Brody  
PATTON BOGGS, LLP  
1660 Lincoln Street, Suite 1900  
Denver, Colorado 80264

Nick Sampinos  
190 North Carbon Avenue  
Price, Utah 84501

A handwritten signature in cursive script, appearing to read "Carol Anne", is written over a horizontal line.

#757484